

## **Exhibit A**

### **Deposition Excerpts of Patrick Bailey dated September 29, 2006**

1                 UNITED STATES DISTRICT COURT  
2                 FOR THE MIDDLE DISTRICT OF ALABAMA  
3                 NORTHERN DIVISION  
4  
5         PATRICK BAILEY,                  )  
6  )  
7         Plaintiff,                      )  
8         VS.                              )         CASE NO:  
9         MILTOPE CORPORATION,          ) 2:05-CV-1061-MEF-DRB  
10  )         DEPOSITION OF:  
11         Defendant.                  )         PATRICK BAILEY  
12  )         VOLUME 2  
13  
14  S T I P U L A T I O N S  
15  IT IS STIPULATED AND AGREED, by and  
16  between the parties through their  
17  respective counsel, that the deposition  
18  of:  
19  PATRICK BAILEY,

20  may be taken before LeAnn Maroney, Notary  
21  Public, State at Large, at the law offices  
22  of Johnston, Barton, Proctor & Powell, 2900  
23  AmSouth/Harbert Plaza, Birmingham, Alabama,

Page 212	Page 214
1 on September 29, 2006, commencing at	1
2 approximately 10:00 a.m.	2
3	3
4 IT IS FURTHER STIPULATED AND AGREED	4
5 that the signature to and reading of the	5
6 deposition by the witness is waived, the	6
7 deposition to have the same force and	7
8 effect as if full compliance had been had	8
9 with all laws and rules of Court relating	9
10 to the taking of depositions.	10
11	11
12 IT IS FURTHER STIPULATED AND AGREED	12
13 that it shall not be necessary for any	13
14 objections to be made by counsel to any	14
15 questions, except as to form or leading	15
16 questions, and that counsel for the parties	16
17 may make objections and assign grounds at	17
18 the time of the trial, or at the time said	18
19 deposition is offered in evidence, or prior	19
20 thereto.	20
21 ***	21
22	22
23	23
Page 213	Page 215
1 APPEARANCES	1 I, LeAnn Maroney, a Court
2 FOR THE PLAINTIFF:	2 Reporter of Birmingham, Alabama, and a
3 DERRICK BLYTHE	3 Notary Public for the State of Alabama at
4 Attorney at Law	4 Large, acting as commissioner, certify that
5 126 Marshall Street	5 on this date, pursuant to Rule 30 of the
6 Alexander City, Alabama 35010	6 Alabama Rules of Civil Procedure and the
7	7 foregoing stipulation of counsel, there
8 FOR THE DEFENDANT:	8 came before me on September 29, 2006,
9 HEATHER F. LINDSAY	9 PATRICK BAILEY, witness in the above cause,
10 Attorney at Law	10 for oral examination, whereupon the
11 Johnston, Barton, Proctor & Powell	11 following proceedings were had:
12 2900 AmSouth/Harbert Plaza	12 PATRICK BAILEY,
13 Birmingham, Alabama 35203	13 being first duly sworn, was examined and
14	14 testified as follows:
15	15 EXAMINATION BY MS. LINDSAY:
16 INDEX	16 Q Mr. Bailey, we meet again.
17 MS. LINDSAY: 215-319; 356-385	17 Thanks for coming back. We'll just finish
18 MR. BLYTHE: 319-356	18 up this deposition. Hopefully it won't
19	19 take very long.
20	20 I have some reminders for you.
21	21 Try to remember to say yes or no rather
22	22 than uh-huh or huh-uh. You and I sometimes
23	23 interrupt each other accidentally. I'll

(Pages 216 to 219)

3

Page 216

Page 218

1 try not to do that. If you would, try to  
 2 remember just to answer my question. And  
 3 if there's something that you haven't had a  
 4 chance to discuss, I'm sure your lawyer  
 5 will have a chance to ask you those  
 6 questions at the end.

7 A Okay.

8 Q I have some notes just based on  
 9 things I wasn't able to wrap it up last  
 10 time. These questions may bounce around in  
 11 different areas, so just bear with me.

12 A Okay.

13 Q One question I have is you  
 14 mentioned having a legal dispute with a  
 15 Mr. McCorkle and Mr. O'Brien. Do you  
 16 remember that?

17 A Correct.

18 Q Were y'all in the same band  
 19 together?

20 A No.

21 Q As I recall your testimony, the  
 22 dispute was over something to do with  
 23 music.

1 Q That was the band you were in at  
 2 Auburn, right?  
 3 A Correct.  
 4 Q Another follow-up question about  
 5 a time period other than your employment  
 6 with Miltope. When you were in the Rat  
 7 Race prior to your working at Miltope, were  
 8 you getting paid for your performances with  
 9 that band?

10 A With Rat Race?

11 Q Yes.

12 A Yes.

13 Q And I believe that this was  
 14 probably in the year 1995 or 1996. Is that  
 15 correct?

16 A It was prior to my initial  
 17 employment with Miltope for a little less  
 18 than one year. It was almost a whole year.

19 Q And this had happened right  
 20 after your mother passed away, correct?

21 A Correct.

22 Q Was the income you received for  
 23 the Rat Race performances your only source

Page 217

Page 219

1 A Correct.

2 Q Were you in bands with each one  
 3 of them?

4 A No.

5 Q So, you were not in a band with  
 6 McCorkle?

7 A No.

8 Q And you were not in a band with  
 9 O'Brien?

10 A No.

11 MR. BLYTHE: Off the record for  
 12 a second.

13 (Discussion held off the record)

14 Q Can you tell me briefly what  
 15 that dispute was about?

16 A Totally separate engagements.

17 They had hired a band I was in to play, and  
 18 they did not pay. Therefore, we had to  
 19 seek some sort of action to be paid.

20 Q And when you say we, which band  
 21 were you acting on behalf of when you asked  
 22 McCorkle and O'Brien to pay?

23 A Imposter.

1 of income in that time period?

2 A Yes. I was married during that  
 3 time, also.

4 Q And your wife was working?

5 A Yes.

6 Q Just for clarification, when you  
 7 interviewed at Miltope with Mr. Ed Crowell,  
 8 what did you understand his title to be?

9 A I don't recall.

10 Q Do you recall Mr. Ed Crowell  
 11 interviewing you prior to both terms of  
 12 employment at Miltope?

13 A I'm not exactly sure about the  
 14 first term of employment. But the second  
 15 term of employment, I did speak to Mr.  
 16 Crowell.

17 Q Do you recall receiving offer  
 18 letters from Mr. Ed Crowell for both terms  
 19 of employment?

20 A I believe that's right.

21 Q Did you understand him to be the  
 22 one to make the decision to hire you?

23 A Yes.

Page 220	Page 222
<p>1 Q And was that understanding the 2 same both times you were employed at 3 Miltope, that Mr. Ed Crowell hired you both 4 times?</p> <p>5 A I believe that to be right.</p> <p>6 Q What did you understand Brian 7 Burkhead's position to be when you worked 8 at Miltope the second time?</p> <p>9 A The second time, my supervisor.</p> <p>10 Q Did you know what area he 11 supervised?</p> <p>12 A He supervised O&amp;R and me.</p> <p>13 Q What does O&amp;R stand for?</p> <p>14 A Overhaul and repair.</p> <p>15 Q When you say he also supervised 16 you, what area were you running?</p> <p>17 A I was the CAV administrator and 18 the government property administrator.</p> <p>19 Q Did you say CAV, C-A-V?</p> <p>20 A CAV, commercial asset 21 visibility.</p> <p>22 Q What does that mean to a regular 23 person like me?</p>	<p>1 described?</p> <p>2 A We had one area that was called 3 NAV IPC Mechanicsburg which was tracked in 4 CAV. That was the Navy ships. We had 5 another area that was NAV ICP Philadelphia 6 which was Navy planes. Those two were the 7 CAV items. The other items that we had 8 in-house were any and all other government 9 property, which would be Army, Air Force, 10 that kind of thing.</p> <p>11 Q So, there were two items that 12 fell within the CAV administrator title?</p> <p>13 A Two sections I would say would 14 be a better way to say it.</p> <p>15 Q And that would have been the 16 Mechanicsburg and –</p> <p>17 A Philadelphia.</p> <p>18 Q And then there was also a 19 separate administrative duty you had with 20 respect to other government property?</p> <p>21 A Correct.</p> <p>22 Q Could you tell me more about 23 what that entailed for you, this separate</p>
<p>1 A I was in charge of the computer 2 system that made it possible for the Navy 3 to view their assets in Miltope's 4 possession for repair.</p> <p>5 Q Was this a way that they could 6 keep track of the status on repair of their 7 property?</p> <p>8 A Exactly, and also for their 9 program managers and people of that nature 10 to be able to tell in what condition each 11 piece of material was. So, if they needed 12 a certain amount, they could look and see 13 how many we had and they could put an order 14 in for that amount or know that they had 15 that many there. And they could also check 16 the status on delivery orders that we had 17 in-house.</p> <p>18 Q When you listed your area, you 19 said CAV administrator and government 20 property, I believe.</p> <p>21 A Right.</p> <p>22 Q How was being over government 23 property different from what you just</p>	<p>1 administrative duty you had?</p> <p>2 A I was sent to school in Ohio for 3 that. That's the IND 101 that you see on 4 there.</p> <p>5 Q I got you.</p> <p>6 A And I was instructed in ways to 7 maintain and store and secure government 8 property. And I was trying to implement 9 some of the things that I had learned in 10 school, which would mean that the -- some 11 certain things I had to have a security 12 clearance for. Some things I had to be 13 able to show a secure storage for and a way 14 to track them when they were in-house.</p> <p>15 Q What type of property were you 16 having to track and store securely?</p> <p>17 A S-3 drives.</p> <p>18 Q What are S-3 drives?</p> <p>19 A Can I go off the record? 20 (Discussion was held off the record.)</p> <p>21 Q Back on the record. With 22 respect to the other government property 23 you had to track and secure securely, that</p>

(Pages 224 to 227)

5

Page 224

Page 226

1   **would have been classified information, as**  
 2   **far as you know?**

3   A    Yes.

4   **Q    What did you understand the**  
 5   **position of Gabe Riesco to be?**

6   A    He was the director of -- he was  
 7   Brian's boss. So, he would have been the  
 8   director of product support. And he was  
 9   also a program manager of a program that I  
 10   can't recall the name of right now. But he  
 11   was Brian's -- Brian reported to him.

12   **Q    And you reported to Brian,**  
 13   **right?**

14   A    Correct.

15   **Q    Do you know who Gabe reported**  
 16   **to?**

17   A    I believe he would report to --  
 18   I don't know if he reported directly to Ed  
 19   or directly to the president of the  
 20   company. I'm not sure. I don't know how  
 21   that went.

22   **Q    This is just a follow-up**  
 23   **question here. The last time we were**

Page 225

Page 227

1   **together, you indicated that you were asked**  
 2   **to join the McQueen Street Band for a**  
 3   **reunion show in 2003. Do you remember that**  
 4   **testimony?**

5   A    Yes.

6   **Q    And when you were talking about**  
 7   **that, you said you were honored to be**  
 8   **asked. Do you remember that?**

9   A    Right.

10   **Q    And you also said I believe**  
 11   **something along the lines of with all that**  
 12   **was going on, it was also something of an**  
 13   **escape. Do you remember saying that?**

14   A    Perhaps. Would you like me to  
 15   clarify that?

16   **Q    I was just going to ask you what**  
 17   **you meant by all that was going on.**

18   A    I had a lot of responsibilities,  
 19   and my father's illness, my daughter. It  
 20   was kind of like -- escape was a bad word.  
 21   It was a very-much-needed temporary  
 22   distraction. Not an ongoing one, but just  
 23   a temporary distraction, something to do

1   other than, you know, worry about  
 2   everything that was going on. I got to go  
 3   play and it was fun and I enjoyed it. It  
 4   made me feel good, and then it was back to  
 5   reality.

6   **Q    When you talk about having a lot**  
 7   **of responsibilities and going back to**  
 8   **reality, you are referring to your dad's**  
 9   **illness and your responsibilities as a**  
 10   **single dad, right?**

11   A    Right. That's a lot of work.

12   **Q    I'm sure it is. And you are not**  
 13   **referring to any other problem or issue**  
 14   **when you are talking about this, are you?**  
 15   **Was there anything else going on?**

16   A    I would have to say that before  
 17   that, you know, getting divorced. That was  
 18   a great deal of emotional pressure. I had  
 19   done everything for everyone else at that  
 20   point. So, doing a little something for  
 21   myself was kind of a well-needed thing or  
 22   well deserved.

23   **Q    Do you remember what date your**

1   **divorce was final?**

2   A    I know the date. I don't  
 3   remember what year. August 9th of -- I  
 4   don't remember what year. That's bad.

5   **Q    Was it the year prior to the**  
 6   **issues with your dad, or had it been**  
 7   **several years that you had been divorced**  
 8   **from Melissa?**

9   A    If you will give me a minute, I  
 10   can tell you what year it is. If I could  
 11   look -- I think I have a copy of my divorce  
 12   decree.

13   **Q    Don't refer to any notes that**  
 14   **you don't want me to see.**

15   A    If it's my divorce decree, it's  
 16   public record. I think I've got a copy of  
 17   that. So, it would be August -- does that  
 18   say '03?

19   MR. BLYTHE: '02.

20   A    '02. It was final on August the  
 21   9th '02.

22   **Q    Thanks for checking that.**

23   A    No problem.

1 Q The last time we talked, you  
 2 said that prior to playing in Cold Hard  
 3 Truth, you played in a band with a friend.  
 4 Do you remember that testimony? What I'm  
 5 getting at is was there another band you  
 6 played in besides McQueen Street, Rat Race  
 7 and Cold Hard Truth?

8 A Oh, sure. I've filled in with  
 9 bands. There was never any kind of  
 10 permanent situation. I played bass in a  
 11 band, but that was not a permanent  
 12 situation.

13 Q So, since you left Miltope the  
 14 second time, you are saying that you filled  
 15 in with bands at various times but not on a  
 16 permanent basis?

17 A Right.

18 Q When you filled in with those  
 19 bands, did you receive some compensation  
 20 for those shows?

21 A Sometimes. Most of the time,  
 22 yes, or I wouldn't -- I wouldn't have done  
 23 it had I not.

1 Q Were you sometimes with the Jeff  
 2 Golden Band again?

3 A No.

4 Q Is it your testimony that your  
 5 income from filling in was not sufficient  
 6 to report to the IRS?

7 A No, it wouldn't have been. Or I  
 8 was told by the accountant that it wouldn't  
 9 have been.

10 Q You do have an accountant?

11 A That filed taxes when I did, yes.

12 Q The last time we talked, you  
 13 said that working two days a week with Cold  
 14 Hard Truth I believe you said is the best  
 15 arrangement considering your family  
 16 obligations. Do you remember that  
 17 testimony?

18 A Well, I mean, under the  
 19 circumstances, it works. Something else  
 20 would probably work, too, you know.

21 Q Are you pursuing any other  
 22 options that you think would work better  
 23 for your family?

1 A At this moment, no.

2 Q Have you actively pursued any  
 3 other options in the last couple of years?

4 A Actively. I might have talked  
 5 to someone about something. But as far as  
 6 -- no. Actively, no.

7 Q Is there any other work schedule  
 8 that you think would work better for your  
 9 family than what you are doing now?

10 A I'm not sure.

11 Q You haven't come up with a  
 12 different idea?

13 A If the opportunity presented  
 14 itself, I might consider it and think about  
 15 it. But I don't dwell on that.

16 Q Last time we talked about your  
 17 dad going to the Presbyterian church at  
 18 some time in his life. Does he still  
 19 attend church today?

20 A No.

21 Q Is he physically able to attend  
 22 church?

23 A No.

1 Q And why is that? Can you tell  
 2 me something about his physical condition  
 3 that --

4 A He sometimes cannot -- how do I  
 5 say that?

6 MR. BLYTHE: Just say it.

7 A There have been instances where  
 8 he has used the restroom on himself and  
 9 that kind of thing, and that would not be  
 10 something that I would want to put him  
 11 through.

12 Q So, was there a time that you  
 13 stopped -- well, can you point to a time  
 14 when he stopped attending church for the  
 15 reason that you just described? In other  
 16 words, is there a time frame for when this  
 17 began?

18 A When his dementia started, when  
 19 the Alzheimer's hit.

20 Q I want to ask you about this  
 21 opportunity you had with Tom Bradley, who  
 22 was a program director. Do you remember  
 23 that?

(Pages 232 to 235)

7

Page 232

Page 234

1 A Yes.  
 2 Q As I understand it, you were  
 3 being asked to take on a job that would  
 4 have taken you away from home for about two  
 5 weeks; is that right?  
 6 A Two weeks at a time is what I  
 7 was told.  
 8 Q Two weeks at a time. And this  
 9 would be a different role within Miltope  
 10 that you were being asked to assume; is  
 11 that right?  
 12 A Right.  
 13 Q Were you being asked to do this  
 14 around the time that you were telling me  
 15 you were seeking leave?  
 16 A It was prior to me seeking  
 17 leave.  
 18 Q Do you remember the title of  
 19 that job?  
 20 A I want to say that it was DPA  
 21 upgrade administrator or something of that  
 22 nature, something close to that. The  
 23 program was a DPA upgrade.

1 this. And I don't -- I don't know at that  
 2 point in time if they had taken it off the  
 3 table or not.  
 4 Q In other words, do you think you  
 5 were still being encouraged to reconsider?  
 6 A Yes.  
 7 Q Did all this come up for the  
 8 first time after July of '03, or do you  
 9 remember?  
 10 A After July of '03 when my father  
 11 was in the hospital the first time?  
 12 Q Yes.  
 13 A It came up after that. I think  
 14 in a way I wanted to try to do more, to be  
 15 more of a provider for my family, and I  
 16 really wanted to be, you know, more  
 17 financially successful. And after looking  
 18 -- I went to Redstone Arsenal with Mr.  
 19 Bradley and I saw what truly was involved  
 20 in the whole thing. And there was no way I  
 21 was going to be able to fill that role that  
 22 needed to be filled, and I told him he was  
 23 going to have to get someone else. And the

Page 233

Page 235

1 Q Last time we talked about your  
 2 meeting with Mr. Crowell on October 27th.  
 3 Do you remember that meeting you told me  
 4 about?  
 5 A Yes.  
 6 Q When y'all were talking about --  
 7 when y'all were having that meeting, my  
 8 understanding is that the DP upgrade  
 9 administrator job was off the table. That  
 10 was not discussed between you and Mr.  
 11 Crowell at that time; is that correct?  
 12 A I believe I mentioned that, and  
 13 I also believe that I -- I told him that  
 14 there was no possible way that I could go  
 15 and be gone to all these different Army  
 16 bases for a week or three days or two weeks  
 17 at a time in the situation that I was in.  
 18 Q Had you not already rejected  
 19 that position, though, by the time you  
 20 spoke with Mr. Crowell in October 2003?  
 21 A I had told Mr. Bradley, I had  
 22 told Gabe, I had told Brian that we were  
 23 going to have to find someone else to do

1 reason that I made that decision and  
 2 thought that was there was a gentleman  
 3 there at Redstone whose wife was at home  
 4 dying of cancer, and he was at work. And I  
 5 couldn't understand that. That's what made  
 6 me think of that. I said, "There's just no  
 7 way I can do this."  
 8 Q Did that make you feel that you  
 9 should be home with your dad at that point?  
 10 A Yes, it did. When I saw someone  
 11 that wasn't at home with their loved one,  
 12 that's what really made me think that. And  
 13 things just kept stacking up that made me  
 14 make my mind up about that. And then we  
 15 had that meeting. And it was like when I  
 16 came out of the meeting, I was totally  
 17 confused again about all those great ideas  
 18 that I had, I need to do this, I need to do  
 19 this, I need to do that. And then I left  
 20 that meeting and I was like, okay, now I  
 21 feel bad. Now what do I do?  
 22 Q What you are referring to I  
 23 believe is when you left the meeting with

Page 236	Page 238
1 <b>Mr. Crowell on October 27th. Am I right?</b>	1 <b>with Mr. Crowell and you say you were --</b>
2   A    Right.	2 <b>you felt talked out of what you had wanted</b>
3 <b>Q    When you say you left that</b>	3 <b>to do, is that the basis for your claim</b>
4 <b>meeting confused, am I right that at that</b>	4 <b>that your attempt to get FMLA leave was</b>
5 <b>point you did not specifically say I need</b>	5 <b>interfered with?</b>
6 <b>my leave to start on such and such date,</b>	6   A    I don't think that it's the
7 <b>that you left it open?</b>	7   base. I think it's the -- no.
8   A    When I went in there, I went in	8 <b>Q    Is there something else that</b>
9   there to tell him I needed to take the	9 <b>happened that told you, hey, someone is</b>
10   leave. And when I told him that and he	10 <b>trying to prevent me from exercising my</b>
11   spent 20 minutes or so -- I don't recall	11 <b>rights?</b>
12   exactly how long the meeting was. But when	12   A    I was waiting on a letter from
13   he had told me the story about his father	13   my father's doctor to forward to Brian
14   and that kind of thing, that kind of made	14   Burkhead. I got the letter, forwarded the
15   me feel like maybe I can work my way	15   letter the next day or the day after. I
16   through this and get through this and take	16   think it was the next day I got a letter in
17   care of everything I've got to take care	17   the mail telling me that I had been fired
18   of.	18   for failure to report to work for three
19   In other words, after I left the	19   consecutive days. That's the crux of this
20   meeting, I had been completely talked out	20   whole thing to me, honestly.
21   of exactly what I went in there to tell	21 <b>Q    So, those are the events that</b>
22   him. So, I went back to my cube and went	22 <b>you think are the most important in terms</b>
23   back to work, and then the events that	23 <b>of your claims?</b>
Page 237	Page 239
1   followed that week were the events that	1 <b>A    Well, I think all the events are</b>
2   made me call Brian and tell Brian to turn	2 <b>important. And the combination of all of</b>
3   that paperwork in.	3 <b>them rolled up into one is why we sit here.</b>
4 <b>Q    What do you recall of what you</b>	4 <b>Q    You don't dispute that you</b>
5 <b>were told about his dad's illness?</b>	5 <b>didn't call in those three days, though,</b>
6   A    I believe he told me that his	6 <b>right?</b>
7   father also had had cancer. And he told me	7    MR. BLYTHE: Object to the form.
8   that even though he was sick, he spent a	8 <b>Q    Do you understand the question?</b>
9   lot of time with his dad and he was able to	9    MR. BLYTHE: You can answer.
10   -- you know, he had family I believe he	10 <b>Q    I can ask you a different one if</b>
11   told me that helped him. Of course, he was	11 <b>you are having trouble answering.</b>
12   married. He had brothers and sisters and	12   A    Please.
13   other family that could help and that kind	13 <b>Q    There were days that you did not</b>
14   of thing. But, see, I wasn't -- I didn't	14 <b>call in, correct?</b>
15   have that.	15   A    Yes.
16 <b>Q    Did he tell you what kind of</b>	16 <b>Q    Did you have any reason to think</b>
17 <b>treatment his dad was receiving?</b>	17 <b>that you had been fired before you received</b>
18   A    I don't recall.	18 <b>that letter?</b>
19 <b>Q    Did he tell you whether his dad</b>	19   A    Not really, no.
20 <b>was able to drive and take care of himself</b>	20 <b>Q    Was there any conversation you</b>
21 <b>during his cancer?</b>	21 <b>had with any Miltape employee before you</b>
22   A    I don't recall.	22 <b>got that letter that made you worry that</b>
23 <b>Q    So, when you left that meeting</b>	23 <b>you were going to be fired?</b>

(Pages 240 to 243)

9

		Page 240	Page 242	
1	A	I believe there was.	1	<b>misunderstood you?</b>
2	Q	<b>Tell me about that, please.</b>	2	A I might have talked to her. But
3	A	Can we go off the record for a	3	as far as -- you asked me did I communicate
4		second and let me ask Derrick a question?	4	with Gabe or Brian or Mr. Crowell. No, I
5		(Discussion held off the record)	5	was not going to communicate with them on
6	Q	<b>Back on the record.</b>	6	the phone. But other people I did talk to
7	A	A Miltope employee called a	7	on the phone that were friends other than
8		friend of mine and asked, "Where is Pat?	8	just people that worked there.
9		Nobody can find Pat. We've been trying to	9	<b>Did you call anyone who was a</b>
10		get in touch with Pat." And at that point	10	<b>Miltope employee to talk about whether you</b>
11		they told them, "I don't know where he is.	11	<b>were still going to come back to the</b>
12		I'll check and see if I can find him." And	12	<b>company after your personal situation</b>
13		he got off the phone with that person and	13	<b>resolved?</b>
14		called me and said that somebody had called	14	A Oh, I had -- I had every
15		looking for me. And I was like, "Well, why	15	intention of going back to work.
16		didn't they call me?"	16	Q I'm asking a different
17		I was told by someone else that	17	question.
18		Brian and Gabe were directed not to answer	18	A Okay. Please clarify.
19		any of my e-mails or return any calls that	19	Q Let me back up and say I
20		I might have made.	20	understand that you didn't call Gabe or
21	Q	<b>Is there anything else?</b>	21	Brian or Ed on the phone.
22	A	No.	22	A Right.
23	Q	<b>Who was the Miltope employee who</b>	23	Q You sent them e-mails.
		Page 241	Page 243	
1		<b>called your friend?</b>	1	A Right.
2	A	Darlene Hill.	2	Q But you said you did make phone
3	Q	<b>And who was the friend she</b>	3	calls to other people who were friends.
4		<b>called?</b>	4	A Right.
5	A	Rhonda Blythe.	5	Q Were any of those friends
6	Q	<b>The wife of your attorney?</b>	6	Miltope employees?
7	A	Yes.	7	A At the time?
8	Q	<b>Who told you that Gabe and Brian</b>	8	Q Yes.
9		<b>had been instructed not to respond to your</b>	9	A Yes.
10		<b>e-mails?</b>	10	Q Who were those folks?
11	A	I believe it was Tina Howell.	11	A Tina Howell.
12	Q	<b>Tina who?</b>	12	Q And Darlene?
13	A	It was either Tina or Darlene.	13	A I didn't -- the only time I
14		I don't remember which one.	14	called Darlene was when I was reporting to
15	Q	<b>Do you remember Tina's last</b>	15	work that I wouldn't be there, one of those
16		<b>name?</b>	16	days.
17	A	Howell.	17	Q But you called Tina as a friend?
18	Q	<b>And she was a Miltope employee?</b>	18	A Right.
19	A	Yes.	19	Q And did you also call Crystal as
20	Q	<b>If I remember your testimony</b>	20	a friend?
21		<b>correctly before, you communicated via</b>	21	A Probably, yeah. They kept a
22		<b>e-mail during this month of November. You</b>	22	boat at my house at that time, if you will
23		<b>did not make phone calls. Did I</b>	23	recall that. And I might have not called

1 and talked to her about it. I might have  
2 talked to her about it when they were at my  
3 house.

4 **Q** And when you talked to Tina as a  
5 friend, did she tell you they really want  
6 you to call and talk to them about this?

7 **Did she say anything at all about --**

8 **A** I don't remember exactly. It's  
9 possible that they said that I should  
10 call. You know, I did send e-mails, and I  
11 wanted an answer that way. I didn't --

12 **Q** Did you think you had the right  
13 to dictate how they could communicate with  
14 you?

15 **A** I wasn't trying to dictate how  
16 they communicated with me. I was trying to  
17 protect myself at that point in time.  
18 Because at that point in time I had, like I  
19 said, received a letter telling me that I  
20 had been fired. And I did not want to say  
21 anything or do anything that -- I just  
22 really didn't know what was going on, and I  
23 wanted some answers. But I wanted them

1 to fax to Miltope?

2 **A** Yes.

3 **Q** And you personally did not  
4 provide that letter, correct?

5 **A** Rephrase it.

6 **Q** As I understood your testimony  
7 last time, you asked that letter to be  
8 faxed on your behalf.

9 **A** Right.

10 **Q** But you personally did not fax  
11 it or hand deliver it?

12 **A** I stood at the desk at the  
13 doctor's office and watched her walk with  
14 the letter to the fax machine, send it, and  
15 then brought it back to me.

16 **Q** And that's what you mean by  
17 providing the letter?

18 **A** Right, from the doctor's  
19 office. I don't own a fax machine.

20 **Q** What did you tell Tina when you  
21 talked to her as your friend during this  
22 time period?

23 **A** I told her I didn't have any

1 where I could look at them instead of  
2 trying to recall what I had talked to them  
3 about on the phone or what they had said to  
4 me on the phone.

5 **Q** Am I right that you came to this  
6 conclusion that you only wanted to talk to  
7 them in writing by e-mail after you  
8 received that letter from Ed Crowell?

9 **A** Probably.

10 **Q** You didn't have any reason to  
11 distrust them before that letter, did you?

12 **A** I had sent the letter prior to  
13 that. And I had told Brian after I asked  
14 him to turn that paperwork in, "If there is  
15 anything else, please let me know," which  
16 would mean if Mr. Crowell is looking for  
17 you to call him to discuss this matter  
18 about you losing your job, I will let you  
19 know. See, Brian could have let me know.  
20 Brian did not let me know.

21 **Q** When you said you provided the  
22 letter, are you referring to the doctor's  
23 letter that you asked the doctor's office

1 clue what was going on. I told her that  
2 Darlene had called looking for me. And  
3 then I believe she told me that Gabe and  
4 Brian were directed not to have any further  
5 communications with me. And the only  
6 response I got as an e-mail from Gabe  
7 regarding anything was that I needed to  
8 provide them with the CAV passwords, which  
9 I had already done. I had already given  
10 them to Lee Butler who was helping me ship  
11 stuff while I was running in and out of the  
12 doctor's office on the phone. There are  
13 people that can verify that.

14 I was working shipping things  
15 out, getting things done. Lee was  
16 helping. I had already done that. And the  
17 only answer I got back from him was I need  
18 the passwords and I need you to return the  
19 company laptop when you can. No mention of  
20 anything else that was going on. Just I  
21 need the passwords and I need this.

22 **Q** When Tina said that Gabe and  
23 Brian had been instructed not to respond to

(Pages 248 to 251)

11

Page 248	Page 250
<p>1   <b>your e-mails, did she say what the source</b>  2   <b>of her information was?</b></p> <p>3   A    No.</p> <p>4   <b>Q    What was Tina's position at</b>  5   <b>Miltope?</b></p> <p>6   A    She was a trainer.</p> <p>7   <b>Q    What kind of trainer?</b></p> <p>8   A    She taught classes on  9   certifications that we had to have.</p> <p>10   <b>Q    She was not in supervision, was</b>  11   <b>she?</b></p> <p>12   A    No.</p> <p>13   <b>Q    Did it occur to you that she</b>  14   <b>might just be passing on idle gossip</b>  15   <b>instead of reliable information?</b></p> <p>16   A    No. I trusted what she said.</p> <p>17   <b>Q    Did it occur to you she might</b>  18   <b>have been mistaken?</b></p> <p>19   A    Ditto. No. I can't answer the  20   -- can we take a break, please? But I need  21   to answer that question first.</p> <p>22   <b>Q    The question was did it occur to</b>  23   <b>you that she could have been mistaken?</b></p>	<p>1   <b>them to him in writing, did you?</b></p> <p>2   A    I probably gave them to him over  3   the phone when I was talking to him over  4   the phone.</p> <p>5   <b>Q    And it's possible that Brian and</b>  6   <b>Gabe did not know you had conveyed that</b>  7   <b>information to Lee, isn't it?</b></p> <p>8   A    It would be hard for them not to  9   know, because Lee was shipping an order out  10   that needed work done in the computer that  11   Lee would have had to have done.</p> <p>12   <b>Q    How do you know that?</b></p> <p>13   A    Because those documents have to  14   have what's called -- or those items have  15   to have what's called a DD-1348, which is a  16   form that the items would have to have on  17   them to be shipped according to procedure.</p> <p>18   <b>Q    Did Lee complete such a form for</b>  19   <b>you when you were out?</b></p> <p>20   A    I walked him through doing  21   those. I think I've got an e-mail from  22   Melody Orr, who was my contact person at  23   NAV ICP.</p>
Page 249	Page 251
<p>1   A    No.</p> <p>2        MS. LINDSAY: We can take a  3   break. I need one, too.</p> <p>4        (Short break was taken.)</p> <p>5   <b>Q    Back on the record. Earlier you</b>  6   <b>testified that you were wondering why they</b>  7   <b>had not tried to call you at home, the</b>  8   <b>Miltope folks. Do you remember that?</b></p> <p>9   A    Yes.</p> <p>10   <b>Q    How do you know they weren't</b>  11   <b>trying to call you at home?</b></p> <p>12   A    I would have seen the number on  13   the phone or either answered the phone.</p> <p>14   <b>Q    Were there times you saw their</b>  15   <b>number on the phone and you just didn't</b>  16   <b>want to pick up and talk to them?</b></p> <p>17   A    I don't think so.</p> <p>18   <b>Q    Isn't it possible there were</b>  19   <b>times you weren't home to pick up the phone</b>  20   <b>and they tried to call you?</b></p> <p>21   A    It's possible.</p> <p>22   <b>Q    When you say you gave the</b>  23   <b>passwords to Lee Butler, you didn't give</b></p>	<p>1   <b>Q    And her e-mail would establish</b>  2   <b>what?</b></p> <p>3   A    That we were getting the 1348's  4   printed out to ship those.</p> <p>5   <b>Q    Was this while your dad was at</b>  6   <b>that appointment?</b></p> <p>7   A    Yes. I was in the doctor's  8   office with my father, and he was back I  9   think doing blood work while I was doing  10   this with Lee on the phone.</p> <p>11   <b>Q    According to your calendar, that</b>  12   <b>occurred on November 6th, a Thursday. Do</b>  13   <b>you have any reason to think your calendar</b>  14   <b>is incorrect?</b></p> <p>15   A    I would have to go back and  16   check, but I don't think so.</p> <p>17   <b>Q    According to your calendar note,</b>  18   <b>you said, "Took dad to doctor. Spoke to</b>  19   <b>Lee Butler on phone regarding Order Number</b>  20   <b>5071 three times. Called Mech" --</b></p> <p>21   A    Mechanicsburg.</p> <p>22   <b>Q    Mechanicsburg, an abbreviation,</b>  23   <b>M-E-C-H, Mel Orr to get CAV link sent to my</b></p>

Page 252	Page 254
1 house. She did. 2 A Right. 3 Q So, if the CAV link was sent to 4 your house, would you have been able to 5 work from home? 6 A She told me that I would be able 7 to work from home and get those forms 8 printed out, but my computer was not quite 9 up to par on doing that. 10 Q So, when the forms did not get 11 printed out from your home for order number 12 5071, what did you do next? 13 A Melody went in the system and 14 completed them, which is something that has 15 to be done. And I had given Lee the 16 passwords, and Lee would have printed the 17 forms out. 18 Q Why would Lee need the passwords 19 if Mel had already completed them? 20 A Melody could not -- when I say 21 completed, that is a status code in the 22 system to show that that item is repaired 23 and finished, completed. But those	1 Q According to your notes, it says 2 on Saturday, "McQueen Street load-in." 3 A That was when we met there and 4 got the gear out. And we might have 5 rehearsed for a little bit, but not much. 6 The rehearsal was basically Sunday. 7 Q And then according to your 8 calendar, the rehearsal also occurred on 9 Monday, November 10th? 10 A Probably Monday morning. I 11 think we had to leave by a little after 12 lunch. 13 Q Did you ever tutor someone named 14 Josh? 15 A Josh Brewer. 16 Q On your November 11th entry it 17 just says, "Josh PMT due 7/30." Was that a 18 payment due to you? 19 A For his lessons. 20 Q So, you were tutoring Josh? 21 A Yes. 22 Q When you were picking up Sydney 23 from visiting her mom that prior weekend,
Page 253	Page 255
1 documents that have to be shipped with them 2 have to be printed out and attached to 3 them. So, she could not have done that 4 short of printing them out and faxing all 5 of them to him to put on there. And then 6 the bar codes would probably not have read 7 correctly at that point. 8 Q On your calendar entry for 9 November 7th, you say, "Worked with Lee on 10 phone. Talked to Brian Goff, 6487." 11 A That might have been when we 12 were trying to get those printed out. 13 Q So, you were trying to get Order 14 5071 shipped out on that Friday? 15 A Exactly. 16 Q When you couldn't get it done at 17 home? 18 A Right. 19 Q And on that same day, you were 20 also preparing to go to Atlanta for a 21 McQueen Street rehearsal, correct? 22 A I believe so. I think it was on 23 Sunday we had that rehearsal.	1 do you remember how you told me you had a 2 flat tire and you got in real late? 3 A Right. 4 Q You were picking her up on 5 Sunday night, right? 6 A Correct. 7 Q That following Monday you said 8 you were too tired to come to work, right? 9 A Right. 10 Q And that's when you called in to 11 Darlene and told her you had a flat tire? 12 A Right. 13 Q So, I guess it's inaccurate on 14 your calendar when you wrote on the 3rd, 15 which was that Monday, "Worked. Syd went 16 to school"?" 17 A It could be, yes. Let me look 18 at that, please. 19 Q Let me give you another copy. 20 A Yeah, that's not correct. 21 Q Okay. 22 A Because that was the Monday that 23 she was down there for Halloween. This is

Page 256	Page 258
1 November 3rd. I believe Halloween was over 2 that weekend or the end of that week.	1 A No. 2 Q In your discussions with Rhonda, 3 did she indicate that she had something 4 against Miltape?
3 Q And, in fact, the Miltape 4 records in terms of your time worked 5 reflect that you were absent on that 6 Monday, as well.	5 A Not -- I mean, no. 6 Q Do you know why -- when she was 7 called by a Miltape employee looking for 8 you, do you know why she didn't just tell 9 them, "Yeah, I know where he is"?
7 A Yes. You are correct in that. 8 Q So, is it possible there are 9 other inaccuracies on this Exhibit 9?	10 A She probably said, "I don't know 11 exactly where he is. Have you tried his 12 house?" I mean, I was not a party to the 13 conversation. I don't know what exactly 14 she said. I do know that some time after 15 that conversation that they had, I was 16 called and I was at home.
10 A I'm sure it's possible. I mean, 11 I don't -- I don't think there is. If you 12 would like for me to review that, I will. 13 Q Well, did you fill it out after 14 the fact, after these dates?	17 Q And did you pick up the phone? 18 A Yeah. 19 Q Who did you talk to? 20 A Derrick. 21 Q Oh. You are not talking about a 22 Miltape employee calling you, then. 23 A No. I don't recall anyone
15 A No. It was around the same time 16 all this was going on. I just made a 17 mistake. 18 Q Did you look for any other 19 calendars that you had for July, August, 20 September, October?	Page 257
21 A No. 22 Q Did you have any more? 23 A I might have had one like on the	Page 259
1 refrigerator at home or something, but I 2 don't have it. I've got one that was in my 3 office, but I think it's mostly -- this was 4 '04, so it's not pertinent.	1 calling me. I think Tina might have called 2 me or e-mailed me or something of that 3 nature.
5 Q Before your father had pneumonia 6 in July, you were good friends with Rhonda 7 Blythe, right?	4 Q Do you remember asking Ed 5 Crowell if you could buy some audio 6 equipment that Miltape was going to discard?
8 A Yes. 9 Q Did you have any information 10 about any complaints she may have had 11 against Miltape at that time?	7 A I remember Miltape having some 8 television production equipment, which did 9 include some audio equipment, that was from 10 a lessor of part of the building.
12 A Not really. 13 Q What do you know, if anything, 14 about complaints she may have had against 15 Miltape?	11 Q When was that? 12 A I do not have a clue. I don't 13 remember.
16 A All I know about that is she was 17 working there and she had complications 18 with her pregnancy, and then after that she 19 was not working there. But I don't know 20 any details.	14 Q Do you remember asking if you 15 could have a microphone from that set of 16 equipment?
21 Q Did you ever hear that she was 22 claiming she was being paid differently 23 from men?	17 A I remember asking -- no, it was 18 not a microphone. I might have asked about 19 a microphone. But he told me that there 20 was a small mixing board, and I asked him 21 about that. And I found someone that 22 purchased the lot of that, and it was my 23 understanding that he had let me have that

Page 260	Page 262
<p>1 little mixing board for helping them 2 liquidate that equipment.</p> <p>3 <b>Q</b> Do you remember being quoted 4 that if you would give -- if you would pay 5 \$200, you could have that equipment, that 6 mixing board?</p> <p>7 A I remember him saying something 8 about that. But after I -- he told me I 9 could purchase it outright for that. But 10 then after I found someone that bought the 11 lot of it, no mention was made of money at 12 all after that.</p> <p>13 <b>Q</b> When you were employed at 14 Miltope the first time, you received a 15 handbook like this here (indicating), 16 correct?</p> <p>17 A Yes.</p> <p>18 <b>Q</b> And do you still retain a copy 19 of that handbook?</p> <p>20 A I don't know. I don't think so.</p> <p>21 <b>Q</b> Were you ever asked to give it 22 back?</p> <p>23 A I don't recall that.</p>	<p>1 <b>Q</b> So, am I understanding how you 2 were making decisions at that time period, 3 or is there something else you need to tell 4 me so I can understand your decision-making 5 process?</p> <p>6 A Could you clarify that, please?</p> <p>7 <b>Q</b> Sure. If I understand you 8 right, after the conversation with Mr. 9 Crowell on October 27th until the week of 10 November 3rd when things became very hectic 11 for you, in that interim period you were 12 considering managing your job as well as 13 the care of your dad? In other words, you 14 were --</p> <p>15 A Was I entertaining the idea of 16 trying to do that? Yes. I was trying to 17 figure out how I would be able to do both.</p> <p>18 <b>Q</b> So, you were debating whether to 19 take leave at all in that week period?</p> <p>20 A Well, I had already filled out 21 the paperwork. It was more or less I was 22 debating on whether or not to turn it in. 23 And then when all those events took place,</p>
Page 261	Page 263
<p>1 <b>Q</b> Between the time that you left 2 Mr. Crowell's office on October 27th and 3 the time you picked up your daughter that 4 following weekend, did you have any 5 conversations with Gabe or Brian about 6 possibly taking leave?</p> <p>7 A I might have talked to both of 8 them about it, but I don't remember an 9 exact conversation.</p> <p>10 <b>Q</b> If I understood your testimony 11 correctly, you left Mr. Crowell's office 12 wondering if you could possibly manage to 13 continue your job and care for your dad 14 based on what Mr. Crowell's story was about 15 his own father's illness; is that right?</p> <p>16 A Maybe. But I -- go ahead.</p> <p>17 <b>Q</b> And if I understood you 18 correctly, you reconsidered that position 19 when this week of November 3rd became so 20 difficult to manage with the illness of 21 your daughter and your father's needing 22 care?</p> <p>23 A Yes.</p>	<p>1 there was no other option. I thought about 2 it. And when everything started happening, 3 there was just no way.</p> <p>4 <b>Q</b> So, as things became difficult 5 the week of November 3rd, that prompted you 6 to call or to discuss with Brian your 7 request that he turn in the paperwork for 8 you?</p> <p>9 A Exactly.</p> <p>10 <b>Q</b> Was there anything else that 11 prompted you to ask Brian to turn in the 12 paperwork for you?</p> <p>13 A I just think the situation as a 14 whole was what prompted me to turn the 15 paperwork in.</p> <p>16 <b>Q</b> That situation being the events 17 of the week of November 3rd?</p> <p>18 A The events of that, yeah, the 19 events as a whole.</p> <p>20 <b>Q</b> When you asked Brian to turn the 21 paperwork in for you, did you tell him that 22 there was a date certain that you wanted 23 your leave to begin?</p>

(Pages 264 to 267)

15

Page 264

Page 266

1 A The paperwork had a place on it  
 2 for the requested date of the leave to  
 3 begin, and the blank had "immediately"  
 4 filled in. So, as of that moment.

5 Q After you received the letter  
 6 from Ed Crowell telling you that you had  
 7 violated the no call-no show policy and  
 8 were considered terminated, did you  
 9 understand that you could be reinstated to  
 10 your job if you requested reconsideration  
 11 and tried to correct any policy violations?

12 A I could not believe that I had  
 13 gotten that letter. And I did not take  
 14 that letter as you need to call and  
 15 straighten all this out. I took that  
 16 letter as I had been terminated. It had  
 17 date of termination on there. So, in other  
 18 words, I had been fired.

19 Now, after all the events that  
 20 had taken place getting that letter, the  
 21 part on there that stuck out the most was  
 22 you've been terminated or your employment  
 23 has been terminated as of this date.

Page 265

Page 267

1 Q But there's nothing in that  
 2 letter that says you are not eligible for  
 3 rehire, is there?

4 A I didn't understand at that  
 5 point why I would have to be rehired if I  
 6 had filled out paperwork for a leave.

7 Q My question is --

8 A No.

9 (Defendant's Exhibit 11  
 was marked for.  
 identification)

10 Q I'm going to show you what I've  
 11 marked as Exhibit 11. If I understand  
 12 correctly your testimony, this is the  
 13 document that the hospice employee was  
 14 directed to fax to Miltope; is that correct?

15 A No. Let me clarify that. The  
 16 hospice employee picked this letter up for  
 17 me from Dr. Law's office and brought it to  
 18 my house. At that point I took the letter  
 19 back to the doctor's office and had her fax  
 20 it, because I do not have a fax machine.  
 21 And I was asked to provide a letter from  
 22 the doctor's office, and that's exactly

1 what I did. I took it back up there and  
 2 had her fax it. Because I kept telling  
 3 her, "I need to get this letter from the  
 4 doctor." I told her I needed to get that  
 5 letter from the doctor, and she called up  
 6 there and checked into why the letter  
 7 wasn't ready yet and that kind of thing.  
 8 And I think the next time she came down was  
 9 when she came and brought the letter.

10 Q So, the letter you were  
 11 referring to is what we have designated as  
 12 Exhibit 11, right?

13 A Yes.

14 (Defendant's Exhibit 12  
 was marked for.  
 identification)

15 Q Let me show you what I've marked  
 16 as Exhibit 12.

17 A That's that letter, other  
 18 letter.

19 Q Be aware if you are going to  
 20 rely on notes while we are talking, I get  
 21 to look at them. So, you might want to  
 22 close your notebook

Page 265

Page 267

1 A I'm making notes as we go. I'm  
 2 writing as we go. I mean, this is just  
 3 stuff I'm writing down as we go here.

4 Q Did you ask the doctor to do  
 5 this letter dated November 29th, Exhibit  
 6 12?

7 A Yes, I did.

8 Q And did you obtain a copy of  
 9 this letter from Temple Medical Clinic?

10 A Yes, I did.

11 Q What was the purpose for getting  
 12 this letter dated November 29th?

13 A After I received the letter from  
 14 Miltope telling me that I had terminated or  
 15 been terminated or terminated my position  
 16 for failure to report for three consecutive  
 17 days, I had no idea in the world what that  
 18 would be the cause of. I sent e-mails  
 19 asking why. I had no idea why. I thought,  
 20 you know, maybe I need to call the doctor  
 21 and get a better explanation of this. No  
 22 one ever told me I needed another letter.  
 23 Nobody ever contacted me about a letter.

1 But I had another letter done detailing  
2 everything that was going on with my dad.

3 **Q Did anyone give you the idea  
4 that you should get this detailed letter?**

5 **A I** came up with that all by  
6 myself.

7 **Q Why didn't you mail this letter  
8 or have this letter faxed to Miltope?**

9 **A Well, it says on the previous  
10 letter please feel free to contact me for  
11 any questions from the doctor's office.  
12 After some after-thought about having this  
13 other letter done, I thought if there's a  
14 reason that Miltope needed to contact the  
15 doctor's office, they could clarify this  
16 and it would be a mute point. Because they  
17 had a way to contact the doctor and the  
18 medical clinic for clarification or either  
19 for anything else they might need to figure  
20 out or to go with that leave paperwork that  
21 I had turned in.**

22 **Q So, rather than provide this  
23 November 29th letter to -- strike that.**

1 **getting this letter was to assist you in  
2 pursuing your claims against Miltope?**

3 **A After a lot of thought about the  
4 whole thing, the only thing I could come up  
5 with was maybe this letter did not satisfy  
6 what Miltope needed. So, I just wanted him  
7 to detail in a letter the situation, how it  
8 was, how it was then, everything else, and  
9 then there would be no question of it. But  
10 as I said before, they had a way to contact  
11 the doctor's office if the letter had been  
12 the problem. That was never done. So, I  
13 had to think after that fact that that  
14 could not have been what it was.**

15 **Q So, rather than provide this  
16 letter to Miltope, your expectation was  
17 that Miltope would contact the doctor  
18 directly based on the prior letter of  
19 November 5th, correct?**

20 **A Right.**

21 **Q So, you did not make a phone  
22 call or send an e-mail to Gabe or Brian to  
23 say, hey, by the way, I do have a better**

1 **This letter is dated November 29th 2004.  
2 Is that the correct date?**

3 **A Right.**

4 **Q So, this was done over a year  
5 after you left Miltope?**

6 **A Right. Well, I don't know. It  
7 says right there since July 2003, if you  
8 will read in the letter. It could be a  
9 typographical error. I'm not sure. We  
10 would have to contact Temple Medical Clinic  
11 to find out.**

12 **Q Let's look at the letter,  
13 because I think we can establish it was  
14 2004. He states towards the middle of the  
15 letter, "A repeat CT of the chest done in  
16 November of 2004 revealed no sign of  
17 malignant tumor."**

18 **A Then the date is correct.**

19 **Q Was your idea that you could use  
20 this letter with another potential employer  
21 other than Miltope?**

22 **A No, no, no.**

23 **Q So, your primary purpose in**

1 **letter that may answer any questions y'all  
2 may have had? You never did that, right?**

3 **A I don't think so. Not after  
4 that period of time, no.**

5 **Q Look back at what was Exhibit 7,  
6 if you would. Go to the page that at the  
7 very bottom right-hand corner has the  
8 number 121 at the bottom. It's labeled  
9 Decision on Unemployment Compensation  
10 Claim. Do you see that?**

11 **A Right.**

12 **Q You appeared for a hearing on  
13 your unemployment claim against Miltope,  
14 correct?**

15 **A Right.**

16 **Q And you were represented by  
17 counsel, correct?**

18 **A Right.**

19 **Q And when you appeared at that  
20 hearing, you were attempting to establish  
21 that you were entitled to benefits, right?**

22 **A Yes. I thought so.**

23 **Q There are some findings. Do you**



1 computer?

2 A I tried.

3 Q Before you had that conversation  
4 with Brian about the doctor's letter, you  
5 already knew that a doctor's substantiation  
6 would be required, didn't you?

7 A He asked for the letter from the  
8 doctor, and that's what I tried to provide.

9 Q And prior to that time when you  
10 had talked with Brian, Gabe and Ed Crowell  
11 and Dee Coulter, you were aware that a  
12 doctor's letter was going to be required,  
13 right?

14 A I honestly don't remember  
15 anything about a doctor's letter or  
16 anything. I remember filling out the  
17 paperwork. I remember having it in the  
18 folder on my desk. I told him if there's  
19 anything else he needed, let me know. And  
20 that's when he told me he needed a letter.  
21 That's all it said, a letter. So, I called  
22 the doctor's office and requested a letter.

23 Q You were aware, weren't you,

1 you were aware of the policies that are in  
2 this Exhibit 4? Do you remember that,  
3 Mr. Bailey?

4 A In our last meeting?

5 Q Yes.

6 A I think it -- I remember saying  
7 that I remembered that. I did not have or  
8 rely on a handbook as I was making these  
9 decisions because I was talking to people  
10 in positions that would be able to guide me  
11 correctly on how to do this. I didn't sit  
12 down and figure out how I was going to do  
13 this. What I did was I -- Dee had told me  
14 that I would qualify. So, that pretty much  
15 told me that I would qualify. So, I didn't  
16 -- I didn't spend a lot of time researching  
17 it in the book.

18 Q When we last spoke, you did not  
19 recall Dee saying that you would qualify.

20 A When she came -- well, she  
21 brought me the paperwork.

22 Q But you had not completed it  
23 yet, so how could she know whether you

1 that if something didn't qualify for family  
2 medical leave, you could still get a  
3 medical leave of absence with a doctor's  
4 note, even if it wasn't a serious health  
5 condition, right?

6 A No.

7 Q Do you remember the policy in  
8 the handbook that said that an employee  
9 requesting a medical leave of absence is  
10 required to submit a statement from his  
11 physician indicating the need for such a  
12 leave?

13 A I don't remember it from the  
14 handbook, no.

15 Q Would you look at what is --  
16 keep that one handy, because we are going  
17 to go back to it. Take a look at Exhibit  
18 4. If you will, look on page -- it says  
19 129 according to our stamp. It's actually  
20 Page 10 of the handbook. Do you see that  
21 in that exhibit about three pages back?

22 A All right.

23 Q Do you remember testifying that

1 would qualify?

2 A Because I told her when she came  
3 into my cube about the situation that was  
4 going on, and she told me that I would  
5 qualify.

6 Q So, did you just remember that  
7 since we last met?

8 A I don't know if I -- I might  
9 have gotten something confused before. But  
10 she brought me the paperwork to fill out.

11 Q Then I'm sure you recall, if she  
12 did say that, that she also told you that  
13 you would have to submit the doctor's  
14 certification to substantiate that?

15 A I don't remember anything period  
16 about a doctor's certification. I had  
17 someone get me up a copy of the actual form  
18 for family medical leave. Since Brian had  
19 turned mine in, I did not have a copy of  
20 that to look at. And there is a part of  
21 that that is several pages into it where it  
22 has a section for the doctor to complete.  
23 I don't recall ever having seen that

1 before. I don't know if it's two separate  
 2 parts, and then this detaches and goes to  
 3 the -- I don't know how that works. But  
 4 the part that I got to fill out did not  
 5 have the doctor's certification in it.

6 **Q Well, you couldn't fill out the**  
**7 doctor's certification yourself, could you?**

8 **A** I realize that. But I could  
 9 take that to a doctor and have it filled  
 10 out.

11 **Q Let's back up. You don't know**  
 12 **whether Brian ever turned in that**  
**13 paperwork, correct?**

14 **A** I would have to think that he  
 15 did, because when I e-mailed him -- or when  
 16 I told him to turn it in and let me know if  
 17 there was anything else he needed, he  
 18 responded back to me that he needed a  
 19 letter. So, I would assume that he turned  
 20 that in.

21 **Q That's just an assumption on**  
**22 your part, correct?**

23 **A** No, I don't think so, because he

1 would have had to have someone tell him  
 2 that the letter was necessary.

3 **Q If we need to go back over the**  
 4 **testimony you gave last time, we can. I**  
 5 **don't want to have to go through that**  
 6 **time-consuming process. The last time we**  
 7 **met, you admitted that you didn't know one**  
 8 **way or the other whether Brian ever turned**  
 9 **that paperwork in. So, are you changing**  
 10 **your testimony?**

11 **A** No. I'm adding to my testimony.

12 **Q And you are adding to the**  
 13 **testimony by saying you think it's a fair**  
 14 **assumption on your part that he actually**  
 15 **turned it in?**

16 **A** I asked him to turn it in. He  
 17 came back and asked me for a letter to go  
 18 with it. So, I am assuming -- and I'm  
 19 pretty sure that he had to have taken it to  
 20 either Dee or someone else for them to tell  
 21 him, "Oh, he needs this letter."

22 **Q And if Brian testifies under**  
 23 **oath that he never saw that paperwork in**

1 **your cube and, therefore, never turned it**  
 2 **in, you wouldn't say that he's lying, would**  
 3 **you?**

4 **MR. BLYTHE: I'm going to object**  
 5 **to the form of that question.**

6 **THE WITNESS: Please do.**

7 **MR. BLYTHE: Reword that a**  
 8 **little bit.**

9 **Q If I represent to you that Brian**  
 10 **never saw the paperwork and never turned it**  
 11 **in, do you think that I've been lied to?**

12 **A** Yes.

13 **Q And you think Brian would lie?**

14 **MR. BLYTHE: Object to the form**  
 15 **of the question. Here again, it assumes**  
 16 **facts not in evidence. We are assuming**  
 17 **stuff that Brian may or may not say or do.**

18 **MS. LINDSAY: That's my whole**  
 19 **concern. I think the initial phase that**  
 20 **we've come to here is all about an**  
 21 **assumption, and I'm trying to clarify**  
 22 **that.**

23 **A** Brian was my supervisor. I

1 asked Brian to turn in the paperwork.  
 2 Brian tells me I need a letter from my  
 3 father's doctor to go with that paperwork.  
 4 So, he had to have turned that in to know  
 5 that a letter was needed.

6 **Q He never told you he turned it**  
 7 **in, did he?**

8 **A** I e-mailed back telling him that  
 9 I had requested the letter from the  
 10 doctor. I think I even thanked him for  
 11 turning it in.

12 **Q The question is he never told**  
 13 **you he turned it in, correct?**

14 **A** He never told me he didn't.

15 **Q He never told you he turned it**  
 16 **in, did he?**

17 **A** I would have to look back  
 18 through my e-mails to see if there was  
 19 anything in there about it.

20 **Q I have that exhibit, too. If we**  
 21 **need to go through it, we can. So, you**  
 22 **don't know one way or the other how to**  
 23 **answer that question? All right. Well,**

1 let's go back to the policy, then.  
 2 A Can you just rephrase the  
 3 question so we can get to an answer on  
 4 that?  
 5 Q I asked you he never told you  
 6 that he turned it in, did he? And you  
 7 haven't answered it yet. Do you have an  
 8 answer?  
 9 A Wow. I had no reason to think  
 10 anything other than he turned it in. No,  
 11 he did not tell me he turned it in. But  
 12 nothing in the verbiage of any of his  
 13 statements back to me or requesting the  
 14 letter indicated that he had not turned it  
 15 in. Is that fair?  
 16 Q I think I understand you.  
 17 A I'm sorry. I can't be more  
 18 clear on that.  
 19 Q If you look back at the policy  
 20 excerpt that we have labeled Exhibit 4, do  
 21 you see there that an employee requesting a  
 22 medical leave of absence is required to  
 23 submit a statement from his physician,

1 that FMLA leave included the requirement  
 2 that there should be a physician statement,  
 3 do you think that she would have conveyed  
 4 that to you?  
 5 A Probably through Brian.  
 6 Q You don't think she would have  
 7 told you that herself when she gave you the  
 8 paperwork?  
 9 MR. BLYTHE: I think that  
 10 question has been asked and answered two or  
 11 three times.  
 12 A I don't know.  
 13 Q Well, last time you didn't  
 14 remember that conversation with her the  
 15 same way you remember it today, so I'm just  
 16 trying to make sure. Do you remember  
 17 anything else she may have said to you?  
 18 A Nothing stood out other than she  
 19 told -- I remember her telling me that I  
 20 would qualify because I was an only child.  
 21 I remember her saying something about  
 22 that. I don't recall anything about a  
 23 physician's statement, a physician's

1 correct?  
 2 A Hold on.  
 3 Q Do you see that at the bottom of  
 4 Page 10?  
 5 A Yes, I see that.  
 6 Q Do you understand that this is  
 7 something that's entirely independent of  
 8 FMLA, or do you not know one way or the  
 9 other?  
 10 A I don't know.  
 11 Q Do you expect Brian to have  
 12 followed the policies in this Miltope  
 13 handbook?  
 14 A I have no -- I have no -- I  
 15 would --  
 16 Q Do you think he would follow the  
 17 policy in the handbook?  
 18 A Yes.  
 19 Q Do you think Dee Coulter was  
 20 trained to follow the policy in the  
 21 handbook, as well?  
 22 A I'm sure she was.  
 23 Q And if her training included

1 letter, anything like that. I don't recall  
 2 that.  
 3 Q And this is the conversation  
 4 where Brian Goff was with you?  
 5 A I believe so. I think he was  
 6 working on my computer or something. If  
 7 Brian had told me, "We need the physician's  
 8 statement part of the FMLA paperwork filled  
 9 out by your father's doctor," then I would  
 10 have probably said, "What is that?" and  
 11 then we would have proceeded on from  
 12 there. But I was told I needed a letter,  
 13 and that's all I was told. So, that's what  
 14 I did the very same day. In fact, five  
 15 minutes after I got off with him, I called  
 16 the doctor's office and requested a letter  
 17 to go with my FMLA paperwork.  
 18 Q So, are you saying today that  
 19 Dee Coulter, without having your completed  
 20 paperwork in hand, without having the  
 21 opportunity to discuss with Ed Crowell the  
 22 circumstances of your situation, that she  
 23 actually told you, "Yes, you will qualify"?

1 A I don't know if she worded it  
 2 you will qualify, you will probably  
 3 qualify, I think you qualify. I don't  
 4 know. But I got the impression that I  
 5 would qualify for FMLA after having the  
 6 conversation.

7 Q Do you admit that when you had  
 8 conversations with Brian and Gabe, they  
 9 both told you that you needed to get in  
 10 touch with human resources about any  
 11 requirements in particular to qualify for  
 12 this FMLA leave?

13 A Well, I mean, that's why I got  
 14 the paperwork from her.

15 Q And --

16 A I -- go ahead. I'm sorry.

17 Q If you will, look back on Page 9  
 18 of the policy.

19 A That would be 128?

20 Q That's right. Under Sick Time  
 21 it says, "The company reserves the right to  
 22 require medical substantiation following  
 23 three days of consecutive absence." Hadn't

1 piece of paperwork. But I told them that  
 2 her birthday is going to be the 21st of  
 3 February. I want to be off on that Friday  
 4 and the following week. That way I would  
 5 have the whole weekend. She was born on  
 6 Friday, and I would have the week. I never  
 7 filled out any paperwork on that at all.

8 Q How much advance notice did you  
 9 give to your supervisor about that?

10 A Probably a week or so at least.

11 Q When was the c-section  
 12 scheduled? When was it decided that it  
 13 would be on February 21st?

14 A I'm doing good to remember all  
 15 the others. I can't remember the day we  
 16 decided.

17 Q Was it a couple of weeks in  
 18 advance at least?

19 A I'm not sure. I don't know. It  
 20 was -- probably that would be fair. I  
 21 don't recall exactly the amount of time  
 22 that passed between the day we decided and  
 23 the actual day.

1 you been required before to submit medical  
 2 substation when your dad --

3 A Never.

4 Q You are saying you never had to  
 5 do that before?

6 A Never. I also never had to fill  
 7 out the first piece of paperwork when I was  
 8 off work for a week after my child was  
 9 born.

10 Q You were actually at the  
 11 hospital at that time, weren't you?

12 A I was at the hospital with my  
 13 child when she was born, yes.

14 Q And there wasn't time for you to  
 15 fill out paperwork when your wife was in  
 16 labor, was there?

17 A It was a planned C-section. So,  
 18 I knew exactly when she was going to be  
 19 born.

20 Q So, you didn't tell your  
 21 supervisor, hey, the c-section is on this  
 22 date and fill out any paperwork?

23 A I didn't fill out the first

1 Q Going back to Exhibit 7, the  
 2 unemployment compensation claim decision,  
 3 do you agree that the last time you worked  
 4 was November 3rd?

5 A Define work. The last time I  
 6 was at work or the last time I was doing  
 7 something for Miltope?

8 Q I guess the real question is,  
 9 just to clarify, you didn't actually report  
 10 to work on November 3rd, correct?

11 A I called in.

12 Q And you attempted to do work by  
 13 telephone when you were not reporting to  
 14 work that week of November 3rd, correct?

15 A Right.

16 Q So, with those clarifications --  
 17 well, strike that.

18 Q You agree that you were out on  
 19 November 4th 2003 when your daughter was  
 20 sick, correct?

21 A Correct.

22 Q You agree that you notified the  
 23 employer at that time, correct?

1 A Yes.  
 2 Q You agree with the statement  
 3 that on November 5th you were out again due  
 4 to your father's illness?  
 5 A Right. And that's the day I  
 6 asked Brian to turn the paperwork in,  
 7 November 5th.  
 8 Q According to this statement,  
 9 "The claimant had requested a Family  
 10 Medical Leave of Absence related to his  
 11 father's illness in October 2003." That's  
 12 correct, right?  
 13 A Yes, because I filled the  
 14 paperwork out in that week prior to -- the  
 15 week before. I filled the paperwork out  
 16 the week before.  
 17 Q According to your testimony,  
 18 before you filled that out on October  
 19 27th. Is that still your testimony today?  
 20 A I'm not sure. It was the week  
 21 of the 27th.  
 22 Q According to your testimony  
 23 before, you filled out that paperwork the

1 Miltope, correct?  
 2 A Right.  
 3 Q And is that the reason for your  
 4 disagreement with that statement?  
 5 A Yes.  
 6 Q There is a statement here that  
 7 the claimant was considered to have  
 8 abandoned his job because he had been  
 9 absent from November 6, 2003, through  
 10 November 11, 2003, without notice to or  
 11 permission from the employer. Do you  
 12 disagree with that statement?  
 13 A Please do that again.  
 14 Q It states here, "The claimant  
 15 was considered to have abandoned his job  
 16 because he had been absent from November 6,  
 17 2003, through November 11, 2003, without  
 18 notice to or permission from the employer."  
 19 Do you agree or disagree with that  
 20 statement?  
 21 A I disagree with that because I  
 22 had turned that paperwork in and asked if  
 23 there was anything else they needed, please

1 same day you had the meeting with Ed  
 2 Crowell on October 27th. Does that refresh  
 3 your memory?  
 4 A It was that week. I'm not  
 5 exactly sure if it was that day, but it was  
 6 that week I can say.  
 7 Q When you went in to tell Ed  
 8 Crowell that you wanted to take leave,  
 9 hadn't you already completed the paperwork?  
 10 A I believe so.  
 11 Q It says here you left the  
 12 paperwork on your desk and asked your  
 13 supervisor to turn in the paperwork.  
 14 That's correct, right?  
 15 A True. That's correct.  
 16 Q It says, "The claimant did not  
 17 provide the required medical documentation  
 18 with the paperwork to justify the request  
 19 for a Family Medical Leave of Absence."  
 20 Now do you disagree with that statement?  
 21 A In hindsight, yes.  
 22 Q At the time you thought you had  
 23 provided the November 5th letter to

1 let me know.  
 2 Q So, your disagreement is based  
 3 on the fact that you told Brian on the 5th,  
 4 "Turn in that paperwork for me" and you  
 5 didn't hear anything else from Miltope --  
 6 A Right.  
 7 Q -- about what else might be  
 8 needed?  
 9 A You know, nobody came back and  
 10 said that the letter wasn't sufficient.  
 11 Nobody came back and said anything.  
 12 Q So, the answer to my question is  
 13 yes?  
 14 A Yes.  
 15 MR. BLYTHE: Wait a minute.  
 16 What was that question?  
 17 MS. LINDSAY: I asked him if he  
 18 disagreed with the statement because, one,  
 19 he had asked Brian to turn in the paperwork  
 20 and, two, he says he didn't hear back  
 21 anything.  
 22 A So, that's yes. I'll go with  
 23 that.

Page 296	Page 298
<p>1   <b>Q</b>    Sometimes if I ask a yes-or-no  2    question and it really is yes or no, go  3    ahead and answer it that way. We'll get  4    done faster.</p> <p>5    A    All right.</p> <p>6    <b>Q</b>    If you need to tell me more to  7    make me understand, that's fine.</p> <p>8    A    Okay.</p> <p>9    <b>Q</b>    When it says without notice to  10   or permission from the employer, you  11   disagree with that because you assumed that  12   you did have the leave approved, correct?</p> <p>13   A    Yes.</p> <p>14   <b>Q</b>    And did you raise these  15   objections at the hearing, your  16   disagreements with these statements?</p> <p>17   A    Yes, I did.</p> <p>18   <b>Q</b>    The next statement says, "The  19   claimant was never advised his request for  20   a Family Medical Leave of Absence had been  21   approved because the medical documentation  22   to justify the Family Medical Leave of  23   Absence was not submitted until after the</p>	<p>1    (Defendant's Exhibit 13  2    was marked for  3    identification)</p> <p>3    <b>Q</b>    Looking at Exhibit 13, it  4    appears that y'all were e-mailing back and  5    forth about your return of the laptop to  6    Miltope; is that correct?</p> <p>7    A    Correct.</p> <p>8    <b>Q</b>    And do you see there on November  9    19th he said, "We need you to return the  10   company laptop and provide passwords to CAV  11   system ASAP"?</p> <p>12   A    Right.</p> <p>13   <b>Q</b>    So, at that point it was your  14   position you had already conveyed those  15   passwords to Lee?</p> <p>16   A    Right.</p> <p>17   <b>Q</b>    How long did it take you to  18   return that laptop?</p> <p>19   A    It was a while. I just -- you  20   know, I had all my personal items in my  21   cubical at work, and I had the laptop. It  22   was a while. There's a record of that  23   somewhere. I think I Fed-Exed it back to</p>
<p style="text-align: center;">Page 297</p> <p>1    <b>claimant was separated." Did you disagree  2    with that statement?</b></p> <p>3    A    Let me read this myself one more  4    time.</p> <p>5    <b>Q</b>    Go ahead. It's the last  6    sentence of that Findings section.</p> <p>7    A    No, I was never advised. I  8    agree with that statement. I was never  9    advised that my paperwork was not adequate.</p> <p>10   <b>Q</b>    Well, this says -- it's a little  11   different statement -- that you were never  12   advised it was actually approved.</p> <p>13   A    I was not notified if it had  14   been approved or disapproved.</p> <p>15   <b>Q</b>    Thank you. That answers my  16   question. And did you appeal that  17   decision?</p> <p>18   A    Yes, because I did not agree  19   with it.</p> <p>20   <b>Q</b>    Was your unemployment  21   compensation claim ultimately denied?</p> <p>22   A    Yes.</p>	<p style="text-align: center;">Page 299</p> <p>1    them or Derrick's office Fed-Exed it back  2    to them.</p> <p>3    <b>Q</b>    And that was after many requests  4    that you return the laptop, correct?</p> <p>5    A    To give you a little groundwork  6    on this e-mail right quick, what started  7    this e-mail was the gentleman that kept his  8    boat at my house told me that Gabe had  9    instructed him to let me know I needed to  10   return that laptop. And that upset me  11   quite a bit because I could have somebody  12   sent down there as a messenger to tell me  13   something, but I could not get anything  14   from anybody else.</p> <p>15   <b>Q</b>    Don't you recall getting that in  16   a letter? Don't you recall that was in  17   your letter from Ed Crowell to return the  18   company laptop?</p> <p>19   A    I don't -- it probably was. I  20   don't deny that. You don't have to get  21   it. I don't deny that.</p> <p>22   <b>Q</b>    So, you knew as of the time you  23   were terminated that you were supposed to</p>

1 call him to arrange return of the laptop,  
 2 right, according to Exhibit 10?  
 3 A Yeah. That's fine. But I  
 4 responded to Gabe with the first thing at  
 5 the bottom of the page, please direct all  
 6 communication directly to me. I've sent a  
 7 number of e-mails to Brian, no response,  
 8 with cc's to you and Mr. Crowell. You have  
 9 a way to contact me, please do so.  
 10 Q So, when you wrote that, you  
 11 were responding to someone being sent as a  
 12 messenger to tell you something?  
 13 A Exactly.  
 14 Q Was that John Reeves?  
 15 A Yes, it was.  
 16 Q And he told you to return the  
 17 laptop, and that upset you that he was  
 18 being sent to do that?  
 19 A Yes. I thought they could have  
 20 -- no one was answering my e-mails that I  
 21 had sent, but then he could send somebody  
 22 down there as a messenger to tell me  
 23 something.

1 Q When Gabe e-mailed you on  
 2 November 11th, "You need to call me or  
 3 Brian ASAP," why didn't you call them?  
 4 A I had been e-mailing them.  
 5 Remember I told you that I didn't want to  
 6 --  
 7 Q Why didn't you just write him  
 8 back and say, "I'm not comfortable talking  
 9 to you on the phone. E-mail me your  
 10 questions and I'll respond"?

11 A I didn't think of that at that  
 12 time.  
 13 Q On Tuesday, November 11th, when  
 14 he said that to you, that was prior to you  
 15 getting your termination letter, correct?  
 16 A It was prior to me getting it.  
 17 Q Right. So, why would you be  
 18 afraid to talk to Gabe on the phone at that  
 19 point?  
 20 A I did not -- what was the --  
 21 Q Let's go back. At that point  
 22 you thought your leave was approved, right?  
 23 A Yes.

1 Q You hadn't received a letter,  
 2 but you thought your leave was approved.  
 3 You also knew that if they needed you, they  
 4 could call you, right?  
 5 A Right.  
 6 Q So, when they e-mailed you, "You  
 7 need to call me or Brian ASAP," did it  
 8 occur to you that maybe they had been  
 9 having trouble reaching you and they needed  
 10 you to take the initiative to call them?  
 11 A But when did I get the e-mail?  
 12 When did I check my e-mail? I'm not sure.  
 13 There must be some reason that I didn't  
 14 respond to that. It may have been after  
 15 the fact. I don't recall.  
 16 Q According to -- just for the  
 17 record, it's what we produced as Bailey  
 18 versus Miltope Corp 00149. According to  
 19 that piece of paper, you were e-mailed on  
 20 November 11th. Do you have any reason to  
 21 think you didn't receive it?  
 22 A No. I'm asking what day did I  
 23 receive it.

1 Q Well, I wouldn't know that.  
 2 A That's my question. I mean, it  
 3 was sent on the 11th because it says that.  
 4 Q Did you not check your e-mail  
 5 every day?  
 6 A I might not have checked it.  
 7 That's on a Tuesday.  
 8 Q According to your calendar, you  
 9 had returned from your Atlanta rehearsal  
 10 and you were tutoring Nicky and Josh that  
 11 day.  
 12 A That's possible.  
 13 Q So, wouldn't you have had time  
 14 to check your e-mail if that's all you were  
 15 doing that day?  
 16 A If I was teaching that day, I  
 17 was at home. So, I mean --  
 18 Q And you had your laptop there,  
 19 right?  
 20 A Well, I had a home computer.  
 21 Q And you could access your work  
 22 e-mail from your home computer, right?  
 23 A No.

Page 304	Page 306
1 Q Why didn't you just access it 2 off your laptop? 3 A I did. 4 Q In fact, that's what you had to 5 do to send all those e-mails you were 6 sending from home, right? 7 A No. I could send an e-mail from 8 home, but I could not access my work e-mail 9 from my home computer. 10 Q But you could access it from 11 your laptop? 12 A Right. 13 Q And you had your laptop 14 available to do that if you chose to? 15 A I had just gotten it. I wasn't 16 real good with that laptop because -- I 17 mean, I had gone on there and -- I went on 18 there and checked some of my e-mails and 19 that kind of thing. 20 Q Wasn't part of your job with 21 Miltope involving computer expertise to 22 manage the tracking and -- 23 A Inventory.	1 2003 doing Rick and Bubba's Fast Fest at 2 Oak Mountain Amphitheater? 3 A What's that? 4 Q It's your e-mail. It says Rick 5 and Bubba's Fast Fest at Oak Mountain 6 Amphitheater. You wrote Derrick Welsh 7 about that. Do you remember? 8 A No, I didn't do that. There's 9 probably a lot more to it other than just 10 what you are reading. I have never done 11 anything with Rick and Bubba. It would be 12 cool, though. 13 Q The president says those guys 14 are dog-gone funny. I heard that on the 15 radio this morning. So, you don't recall 16 that? 17 A No. I have never done Rick and 18 Bubba. I don't have any idea. Read that 19 whole thing, and it will probably clear 20 that up. 21 Q Do you remember a man named 22 Danny Johnson asking you to help him get a 23 job at Miltope?
Page 305	Page 307
1 Q So, you didn't -- 2 A I'm not a technician. I was not 3 a technician. 4 Q Prior to November you had had 5 some absences from Miltope because of 6 rehearsals with the band, correct? 7 A There might have been one or 8 two. 9 Q According to one of your 10 e-mails, you had a rehearsal on October 11 13th, which was a Monday. Do you remember 12 that? 13 A I don't remember it, but yes, 14 that's possible. 15 Q And according to company 16 records, you took a vacation day that 17 Monday, the 13th. 18 A That's possible. 19 Q So, you don't have any reason to 20 dispute that you actually attended a 21 rehearsal that day? 22 A No, not at all. 23 Q Do you recall in early October	1 A Yes, I do. 2 Q Did you ever discuss with Mr. 3 Crowell Danny Johnson potentially being 4 employed there? 5 A I don't recall if I did or not. 6 I think I had mentioned that I had -- or 7 either to Brian that I had someone that -- 8 I think Danny had gotten A Plus 9 certification for computers or something. 10 He had gone to school, and I had asked if 11 there were any openings and that kind of 12 thing. But I don't think anything ever 13 came out of that. 14 Q Do you remember attending a 15 rehearsal for the band the weekend of 16 September 5th? 17 A I think so. 18 Q According to your work schedule, 19 you took a sick day on that Friday, the 20 5th, and a vacation day that Monday, the 21 8th. 22 A (Witness nods head.) 23 Q So, that would have been so you

Page 308	Page 310
1 could handle the rehearsal with the band?	1 address that to those people?
2 A Right.	2 A I don't know. I don't think so.
3 Q Earlier you testified that there	3 MS. LINDSAY: I think I'm
4 was an e-mail where you said to Brian and	4 probably done, but I want to look at my
5 Gabe, "If there's anything else you need,	5 notes. Do you want to take a brief lunch
6 please let me know," right? Do you	6 break?
7 remember that testimony?	7 MR. BLYTHE: That's fine.
8 A Yes. That was the e-mail around	8 (Lunch break was taken)
9 the time I told them that I had requested	
10 the doctor's letter. If there was anything	
11 else he needed, let me know.	
12 Q This is the e-mail I found	9 Q Mr. Bailey, we are back on the
13 (indicating). Is that the e-mail that you	10 record after lunch. Is there anything that
14 sent?	11 you need to say to clarify any prior
15 MS. LINDSAY: For the record,	12 answers?
16 that's Bates stamped 152.	13 A Not at this time.
17 A Right, I sent that. Yes, I	14 Q I was going to ask you why Tina
18 remember that.	15 Howell is not listed as one of your
19 Q And that was the e-mail you were	16 witnesses on your initial disclosures. Do
20 referring to about following up with them	17 you know?
21 to find out if there was anything else they	18 A I didn't think about it until in
22 needed?	19 the middle of all this. She can be added,
23 A Yes.	20 if you like.
Page 309	
1 Q Was there any other	21 Q Are you going to -- do you want
2 communication between the 5th and the 14th?	22 to call her to testify if there's a trial?
3 A I don't remember.	23 A I guess, yes.
4 Q And if there isn't a document	
5 that reflects that there was a	
6 communication, do you have any reason to	
7 believe that we are missing documents?	
8 A Between the 5th and the 14th	19 Q Do you know if she still works
9 there was communication. There was phone	20 at Miltope?
10 communication. You know, I told you on the	21 A I don't think she does.
11 7th that I was working with Lee. On the	22 Q Do you know how I can reach her?
12 6th I was working with Lee. I was talking	23 A I may have a phone number for
13 to people in Pennsylvania. But as far as	6 her. If I don't, I can probably get one.
14 is there an e-mail, I don't know.	7 Q Would you provide that to your
15 Q Let me ask a better question.	8 lawyer so that can be shared with me?
16 What I was thinking about is in terms of	9 A Sure.
17 you e-mailing Brian or Gabe about whether	10 Q Going back to your conversation
18 more documentation was needed. The only	11 with Dee -- which I understand there was
19 two e-mails I found are November 5th and	12 just one. Am I right?
20 November 14th.	13 A I believe so.
21 A Okay.	14 Q If she says that she told you
22 Q So, would there be any other	15 that your leave would have to be approved
23 e-mails do you think that specifically	16 by Brian Burkhead and Ed Crowell, would you
	17 dispute that?
	18 A No, I wouldn't dispute it. I
	19 think when the conversation was had and she
	20 told me that I would qualify, it was
	21 probably more, "Well, if everything is as
	22 you say it is, you probably qualify," that
	23 kind of thing. It was not that she was

(Pages 312 to 315)

27

Page 312

1 saying you can be off as of -- what date do  
 2 you want to be off? It wasn't set in  
 3 stone. She said if everything -- let me  
 4 rephrase this. I think she was saying if  
 5 the conditions were as I had said, then I  
 6 would qualify.

7 **Q You understood that she did not**  
 8 **have the authority to authorize the leave**  
 9 **on her own, right?**

10 A I wouldn't think so.

11 **Q You didn't think she had that**  
 12 **authority?**

13 A Well, I didn't really even think  
 14 about that at the time.

15 **Q Would you look back at Exhibit**  
 16 **10? I wanted to call your attention to**  
 17 **where it says, "You may be considered to**  
 18 **have resigned without notice and removed**  
 19 **from the payroll." Do you see that part of**  
 20 **the letter?**

21 A Right.

22 **Q And then he states, "Your**  
 23 **actions meet this requirement of having**

Page 312

Page 314

1 strictly the computer back and no other  
 2 communication.

3 **Q My question is --**

4 A I took this as a direct  
 5 termination letter.

6 **Q And do you understand that the**  
 7 **word "termination" could include an ending**  
 8 **of employment that is not because you are**  
 9 **fired? Let me ask a better question.**

10 **Do you understand that you,**  
 11 **yourself, can terminate your own employment**  
 12 **from a company?**

13 A I'm sure a person could.

14 **Q You've probably seen that in**  
 15 **handbooks before, that employment at-will**  
 16 **in Alabama means you can terminate or I can**  
 17 **terminate your employment with or without**  
 18 **cause at any time, right?**

19 A I'm not really up on that.

20 **Q Let me show you in the Miltope**  
 21 **handbook. It says in the last paragraph,**  
 22 **"Either the employee or Miltope may**  
 23 **terminate the employment relationship at**

Page 313

Page 315

1 **voluntarily resigned." Do you see that**  
 2 **part?**

3 A Right.

4 **Q As I understood your testimony,**  
 5 **you considered this letter to fire you; is**  
 6 **that right?**

7 A Correct.

8 **Q But you understand and agree**  
 9 **with me, don't you, that this letter states**  
 10 **that according to Miltope, you voluntarily**  
 11 **resigned? Do you understand that?**

12 A I keep reading the first line.

13 **Q Okay. So, the word "terminated"**  
 14 **is what raises a red flag for you?**

15 A Yes. And there is no mention in  
 16 the second paragraph of please contact me  
 17 to make arrangements to clarify your need  
 18 for leave or the leave you have requested  
 19 or anything. It says to return the  
 20 company's laptop. It makes no effort to --  
 21 it didn't read very much like a request for  
 22 a clarification or anything. It reads as a  
 23 termination letter, because they want

1 **any time." Do you see that in the last**  
 2 **paragraph?**

3 A Yeah, I see that.

4 **Q So, do you understand that to**  
 5 **mean that you would have the right to**  
 6 **terminate the relationship yourself?**

7 A I'm certain that that would  
 8 be -- according to that paragraph that that  
 9 would be the case.

10 (Defendant's Exhibit 14  
 was marked for  
 identification)

11 **Q Let me show you Defendant's**  
 12 **Exhibit 14. If you would, look at the**  
 13 **middle e-mail from you to Brian on November**  
 14 **17th. Do you see that?**

15 A Right.

16 **Q This appears to me to be your --**  
 17 **to be a follow-up e-mail after you received**  
 18 **your termination letter.**

19 A Right.

20 **Q And in response to that e-mail,**  
 21 **you were asked by John Reeves to return the**  
 22 **company laptop? Is that kind of the way**

Page 316	Page 318
<p>1 you felt the events transpired?</p> <p>2 A No. I think that would be --</p> <p>3 according to this other e-mail that I sent</p> <p>4 to Gabe on the 18th, if I responded to</p> <p>5 Brian on the 17th, that means that John</p> <p>6 would not have responded to me -- or John</p> <p>7 would not have told me that yet. Because</p> <p>8 it says --</p>	<p>1 been upset concerning you the week before</p> <p>2 you went to that rehearsal?</p> <p>3 A I am an only child. My father</p> <p>4 has probably three things in his life that</p> <p>5 he loves and cares about. One would be me,</p> <p>6 one would be my daughter, and the other</p> <p>7 would be a hundred-pound black lab. And</p> <p>8 I'm sure that that's why he would be</p> <p>9 concerned about me.</p>
<p>9 Q Let me ask you a better</p> <p>10 question. After you sent this e-mail on</p> <p>11 November 17th, was that when John Reeves</p> <p>12 came to see you?</p>	<p>10 Q So, you are saying he would be</p> <p>11 preoccupied with you regardless of what was</p> <p>12 going on with you?</p>
<p>13 A What was the day of the week of</p> <p>14 November 17th?</p>	<p>13 A Probably.</p>
<p>15 Q According to your e-mail, it was</p> <p>16 a Monday.</p>	<p>14 Q Have you and your dad had any</p> <p>15 conflicts concerning your participation in</p> <p>16 the McQueen Street, Rat Race or Cold Hard</p> <p>17 Truth bands?</p>
<p>17 A Okay. I see that now. Sorry.</p>	<p>18 A No.</p>
<p>18 Q That's okay.</p>	<p>19 A MS. LINDSAY. Unless there are</p> <p>20 other documents that come into play -- I</p> <p>21 know we talked about this before. I don't</p> <p>22 think y'all have any other documents. But</p> <p>23 if some come to light, I would reserve the</p>
<p>19 A Maybe John did tell me -- maybe</p> <p>20 it was over the weekend that they came down</p> <p>21 for the boat or something and he told me</p> <p>22 that. That's possible.</p>	<p>19 Q I am correct?</p> <p>20 A No one responded to me. Yes,</p> <p>21 you are correct.</p>
<p>21 Q No one answered these questions?</p> <p>22 A I'm trying to follow that</p> <p>23 around.</p>	<p>22 Q Let me try to clean up the</p> <p>23 question. No one at Miltope answered the</p> <p>24 questions you raised in your November 17th</p> <p>25 e-mail, correct?</p>
<p>23 A Yes.</p>	<p>23 A As I said when she asked before,</p> <p>24 I somehow thought it was the 19th, but I</p> <p>25 might have made a mistake. It was the</p>
<p>24 Q According to the chaplain notes</p> <p>25 about your dad the week before your</p> <p>26 September 5th rehearsal for the McQueen</p> <p>27 Street show, your dad was feeling hopeless</p> <p>28 and it suggested in the note that it had to</p> <p>29 do with you. Was your dad against you</p> <p>30 working with the McQueen Street band?</p>	<p>24 Q I'll just start back when we</p> <p>25 were here the first time. There were a</p> <p>26 couple of things that needed clarifying.</p> <p>27 On the November 29th 2003</p> <p>28 McQueen Street, was that the 19th or the</p> <p>29 29th that that was to be played, do you</p> <p>30 recall?</p>
<p>25 A No, ma'am.</p>	<p>25 A It was a place in Montgomery</p> <p>26 called Carrera's, and we played that</p> <p>27 Saturday. And it was from -- we had an</p> <p>28 itinerary which I'm sure is in these</p> <p>29 exhibits somewhere of every place we had to</p> <p>30 be that whole day.</p>
<p>25 Q Do you know why he would have</p>	<p>25 Q And y'all played where and when?</p> <p>26 Q Was that the fundraiser for the</p> <p>27 --</p>

(Pages 320 to 323)

29

	Page 320	Page 322
1	A No.	1 were different then. The situation was
2	Q When you played at all with any	2 different then.
3	of these bands, were they primarily local	3 Q Let me interrupt you.
4	or regional affairs? In other words, you	4 A Please do.
5	didn't have to go very far, such as Los	5 Q When did you go to work for
6	Angeles and --	6 Miltope the very first time?
7	A No. In that aspect, they would	7 A The year?
8	be local. Because the two McQueen Street	8 Q Yes.
9	shows I've done, one was in Montgomery and	9 A '96, I think.
10	the other was in Prattville.	10 Q And when did you leave working
11	Q Just let me be frank. Could you	11 for them the very first time?
12	support yourself by playing in a band	12 A Either early '98 or late '97.
13	solely?	13 Q And how long were you gone from
14	A Solely?	14 Miltope?
15	Q Yes. I mean you and your	15 A Three and a half years.
16	family.	16 Q And then you came back?
17	A Not really.	17 A Right.
18	Q And back with the -- and I'm	18 Q What year did you come back?
19	just following up on a question that	19 A 2001, I think.
20	Heather had asked you. Imposter, was it	20 Q And then you finished with
21	ever a break-even proposition?	21 Miltope I guess the date of the letter of
22	A Never. It was a broke	22 termination, correct?
23	proposition.	23 A Yes.
	Page 321	Page 323
1	Q And you haven't made enough	1 Q That's what I was wanting to get
2	money in the music industry to really	2 to. There was some reference made earlier
3	amount to anything, maybe to pay for a set	3 in the deposition to a time sheet for the
4	of drums here and there or something like	4 week ending November 2nd 2003 and November
5	that?	5 9th 2003, and I just wanted to clarify
6	A Yeah. But that all falls back	6 this. Those are not your signatures on
7	into expenses and tools.	7 these time sheets?
8	MS. LINDSAY: I feel like I	8 A Right.
9	should object to the form of that one. To	9 Q On either one; is that correct?
10	really amount to anything is kind of harsh,	10 A Right.
11	Derrick.	11 Q I just wanted to clarify that.
12	Q Let me move on.	12 Those are actually, I believe --
13	A So now I know how you really	13 A Brian Burkhead signing my name.
14	feel.	14 Q And he initialed beside it?
15	Q Tell me just briefly what your	15 A Right.
16	work history is with Miltope, just the	16 Q He wasn't trying to conceal it.
17	dates and times that you went to work, left	17 Who is Darrell Cook, just briefly?
18	work and then came back to work.	18 A Darrell Cook is in the Miltope
19	A The first time I was with	19 information systems, MIS. I think he may
20	Miltope, I had -- sometimes I was on a	20 be the supervisor over MIS, but I'm not
21	project and I would go in to work at 6:30	21 exactly sure.
22	in the morning, and sometimes I wouldn't	22 Q Did you ever receive any
23	leave until 7:00 o'clock at night. Things	23 unemployment compensation after being

<p style="text-align: right;">Page 324</p> <p>1 <b>terminated from Miltape?</b></p> <p>2 A No, sir.</p> <p>3 Q <b>Any medical benefits?</b></p> <p>4 A No, sir.</p> <p>5 Q <b>Are you currently having some medical problems?</b></p> <p>6 A Financial problems, not medical problems.</p> <p>7 Q <b>Well, have you just recently had some surgeries?</b></p> <p>8 A Yes.</p> <p>9 Q <b>If you would, briefly tell me what that is.</b></p> <p>10 A The amount or --</p> <p>11 Q <b>Just what you had done, what you had performed.</b></p> <p>12 A ACL reconstruction.</p> <p>13 Q <b>For us nonmedical people, that's your knee, correct?</b></p> <p>14 A Anterior cruciate ligament.</p> <p>15 Q <b>But that's your knee, right?</b></p> <p>16 A It's the one that goes between the two bones of the leg, yes, the</p>	<p style="text-align: right;">Page 326</p> <p>1 Q <b>And to your knowledge, you were to be solely responsible to the Navy for those CAV requirements; is that correct?</b></p> <p>2 A I believe so.</p> <p>3 Q <b>So, technically any other assignment or delegation of duty would have been in violation of that contract with the Department of Defense?</b></p> <p>4 A MS. LINDSAY: Object to the form.</p> <p>5 Q I would think so.</p> <p>6 Q <b>Did you like working at Miltape?</b></p> <p>7 A I did.</p> <p>8 Q <b>Did you like your job?</b></p> <p>9 A I did.</p> <p>10 Q <b>In the end, do you feel like you were treated unfairly?</b></p> <p>11 A Yes, I do.</p> <p>12 Q <b>Would you have stayed there had none of this occurred? Would you still be working at Miltape today?</b></p> <p>13 A MS. LINDSAY: Object to the form. You can answer.</p>
<p style="text-align: right;">Page 325</p> <p>1 football-ending injury.</p> <p>2 Q <b>How much did you make at Miltape?</b></p> <p>3 A I made about \$15 an hour.</p> <p>4 Q <b>And that was right before your termination, correct?</b></p> <p>5 A Correct.</p> <p>6 Q <b>At that time what was your job?</b></p> <p>7 A CAV administrator, government property administrator.</p> <p>8 Q <b>Was that your only obligation or duty with Miltape?</b></p> <p>9 A As I had said before, they were wanting me to add the DPA upgrade responsibility which would require the traveling and that kind of stuff, and I was not in a position to be able to do that.</p> <p>10 Q <b>Was that permissible under the contract with the Navy concerning CAV?</b></p> <p>11 A I don't know. CAV is supposed to be dedicated, and the Navy supplements the -- or pays Miltape quarterly for that position to be a dedicated position.</p>	<p style="text-align: right;">Page 327</p> <p>1 A I can still answer?</p> <p>2 Q Yes.</p> <p>3 A My intention with the whole thing was to go home, take care of my father and get everything going for a couple of weeks. And I had even told Brian, "If I get things to where I can come back, I'll come right back. But I just need to be home." And it was not -- they had given my daddy about three months, the doctor said, when we were in the hospital. We were about three months from there when all this was going on. I felt I needed to be there and at least make sure that I was doing everything I could for him.</p> <p>4 A And I told Brian of my intention to try to come down there and catch things up when I could, even though I wasn't getting paid, just to be able to keep my job. But when I got the letter and everything else, I felt very mistreated, violated, lied to, everything else.</p> <p>5 Q <b>If you were still working for</b></p>

(Pages 328 to 331)

31

Page 328

Page 330

1 **Miltope, would it have been -- and I guess**  
 2 **this question should be phrased this way.**  
 3 **Would it have been financially possible for**  
 4 **you to make other arrangements to care for**  
 5 **your father if you were still employed with**  
 6 **Miltope today?**

7 A Probably.

8 Q You think you could hire  
 9 someone, a sitter or someone like that?

10 A Yes.

11 Q And your father today, is he --  
 12 is he well?

13 A No.

14 MS. LINDSAY: Object to the  
 15 form. You were too fast for me.

16 Q On Exhibit 3, what's marked as  
 17 SR619, in the middle of that page what does  
 18 it say as reason for admission?

19 A Mr. Bailey is an 84-year-old  
 20 white male with the above-mentioned medical  
 21 problems, including tobacco dependency, who  
 22 presently (sic.) initially to clinic with a  
 23 two to three-day history of rigors and mild

Page 329

Page 331

1 to moderate cough with some associated  
 2 fever and chills. No knowledge of  
 3 vomiting, diarrhea. On arrival he was  
 4 noted to be hypoxic with an 02 sat in the  
 5 81 to 91 percent range. And I don't know  
 6 what that word means right there, with a  
 7 temperature of 100.7. Physical exam  
 8 revealed decreased breathing sounds at  
 9 right base. Subsequent chest X-ray  
 10 revealed right lower lobe infiltrate with  
 11 diffusion. He was subsequently admitted.  
 12 IV fluid, hydration, nebulized treatments  
 13 and IV --

14 Q Let me stop you for a second.  
 15 When he was admitted, did you understand  
 16 him to have lung cancer?

17 A Yes, I did.

18 Q And on this document does it  
 19 give a long-term prognosis for him?

20 A I don't know.

21 Q Just take a second and look at  
 22 it.

23 A "The Patient's long-term

1 prognosis, as mentioned above, is poor.  
 2 His son wishes for no aggressive measures,  
 3 and this has been discussed on several  
 4 occasions."

5 Q And the very first sentence in  
 6 the discharge summary addresses the same  
 7 thing, does it not?

8 A "Discussion was made with his  
 9 son at length in regards to his poor  
 10 overall long-term prognosis."

11 Q To you, when you were discussing  
 12 this with the doctor, as he documented in  
 13 his discharge summary, what did that mean  
 14 to you about your daddy?

15 A That he wasn't going to be  
 16 around much longer. Can I elaborate on  
 17 that?

18 Q Let me move on. What is  
 19 hospice? What's its purpose or mission, as  
 20 best you know?

21 A To help the family and a patient  
 22 that is terminally ill in their last days.

23 Q And was your father being -- was

1 he admitted to hospice care?

2 A Yes, he was.

3 Q If I told you that it was around  
 4 July 22nd 2003, would you dispute that?

5 A No.

6 MS. LINDSAY: It's already been  
 7 answered, but I won't object.

8 Q During this time period when you  
 9 were working and trying to care for your  
 10 father and your daughter, this is the time  
 11 period when Brian made the comment  
 12 regarding you getting married; is that  
 13 correct?

14 MS. LINDSAY: Object to the  
 15 form.

16 A Yes.

17 Q In regards to that comment about  
 18 you needing to get married and your, I  
 19 guess, offense to that, did Brian ever  
 20 offer any meaningful defense to that  
 21 comment?

22 MS. LINDSAY: Object to the  
 23 form.

		Page 332	Page 334		
		Page 333	Page 335		
1	<b>Q</b>	Go ahead and answer.	1	<b>Q</b>	And I know that Heather asked you a few questions about the possibilities of the fax and what could or might have been. Is it also possible that Miltope actually received the fax from Dr. Law?
2	<b>A</b>	Not really.	2	<b>A</b>	Yes, it is possible.
3	<b>Q</b>	Now, was it easy to get in to see Mr. Crowell?	3	<b>Q</b>	Did the lady at the doctor's office indicate to you that she had any trouble faxing the document?
4			4	<b>MS. LINDSAY:</b>	Object to the form.
5		MS. LINDSAY: Object to the form. We are getting into a lot of asked and answered stuff. You can answer.	5	<b>A</b>	No.
6			6	<b>Q</b>	Did it appear from your observations that she had any problem faxing the letter from the doctor's office?
7		MR. BLYTHE: I have never asked that question.	7	<b>A</b>	No, sir.
8			8	<b>Q</b>	And then you went to a meeting with Mr. Crowell. That would have been about October 27th?
9		MS. LINDSAY: It's been covered in prior deposition testimony, and he's gone on at length about that. If y'all want to keep on going so that I can ask more clarifying questions, that's fine.	9	<b>MS. LINDSAY:</b>	Object to the form.
10	<b>A</b>	No.	10	<b>A</b>	No.
11	<b>Q</b>	Let's look at Exhibit 5. When was Exhibit 5 from?	11	<b>Q</b>	Did it appear from your observations that she had any problem faxing the letter from the doctor's office?
12	<b>A</b>	'97.	12	<b>A</b>	No, sir.
13	<b>Q</b>	To your knowledge, is there any similar document where you agreed to conform to the company policies after being rehired a second time with Miltope Corporation?	13	<b>Q</b>	And then you went to a meeting with Mr. Crowell. That would have been about October 27th?
14			14	<b>MS. LINDSAY:</b>	Object to the form.
15			15	<b>MR. BLYTHE:</b>	I'm just really trying to clarify it. I'm talking out
16			16		
17			17		
18			18		
19			19		
20			20		
21			21		
22			22		
23			23		

(Pages 336 to 339)

33

Page 336

1 MS. LINDSAY: Object to the  
 2 form, asked and answered. You can answer  
 3 again.

4 A Because I knew what I needed to  
 5 do when I went in there. And when I came  
 6 out, I wasn't sure.

7 Q **So, you went in there to ask for  
 8 family leave?**

9 MS. LINDSAY: Object to the  
 10 form.

11 A I pretty much went in to tell  
 12 him that I needed to take family medical  
 13 leave.

14 Q **Did Mr. Crowell discuss your  
 15 duty and obligations to the company?**

16 MS. LINDSAY: Object to the  
 17 form.

18 A Yes, he did.

19 Q **If you had not talked to him  
 20 about this, would you have just went ahead  
 21 and taken family leave?**

22 MS. LINDSAY: Object to the  
 23 form.

Page 338

1 Miltope.

2 Q **And did you keep calling until  
 3 you got a person?**

4 A I got Brian's voice mail. I  
 5 called Shelly's number. She sent me to  
 6 Darlene. I talked to Tongie, and Tongie  
 7 finally got me to Darlene and I explained  
 8 to Darlene what happened.

9 Q **Did you also send an e-mail to  
 10 Brian about being out that day?**

11 A I'm not sure if I did that day.

12 MS. LINDSAY: If there is one, I  
 13 would sure like to see it.

14 MR. BLYTHE: Hold on one  
 15 second. For some reason I thought you gave  
 16 it to me.

17 A I know there's an e-mail in  
 18 there.

19 MS. LINDSAY: Are you referring  
 20 to notes to answer the question,  
 21 Mr. Bailey?

22 THE WITNESS: No. I was looking  
 23 for a copy of that e-mail.

Page 337

1 A Yes.

2 Q **And you went in there with that  
 3 intention?**

4 MS. LINDSAY: Object to the  
 5 form.

6 A Yes.

7 Q **So, would it be safe to  
 8 characterize this as Mr. Crowell talked you  
 9 out of taking the leave?**

10 MS. LINDSAY. Object to the  
 11 form. Are you going to lead him a lot  
 12 more?

13 MR. BLYTHE: I'm trying to just  
 14 get us through.

15 MS. LINDSAY: It's already been  
 16 covered. Object to form. You can answer.

17 A Yes, I feel like he talked me  
 18 out of it.

19 Q **On that Monday that you were out  
 20 with your daughter, did you call Miltope?**

21 A The Monday I was out with myself  
 22 for being up all night with a flat tire.  
 23 She was at school. And yes, I did call

Page 339

1 Q **Actually, I think that it was  
 2 covered on -- look on Defendant's Exhibit  
 3 8. Look on Exhibit 8 right there, if you  
 4 would.**

5 A Got you.

6 Q **The one we were just talking  
 7 about.**

8 A All right.

9 Q **What is the very first sentence  
 10 in that e-mail?**

11 A "I called in both Monday and  
 12 Tuesday, asked you to return the call both  
 13 times. Still no response from you. What  
 14 are you trying to say? Hopefully it is  
 15 different than what I am hearing."

16 Q **What's the date on that e-mail?**

17 A November 5th.

18 Q **So, the Monday I just asked you  
 19 about would have been addressed in this  
 20 e-mail on the 5th; is that correct?**

21 MS. LINDSAY: Object to the  
 22 form.

23 A Correct.

Page 340	Page 342
<p>1 Q Did you ever get any type of  2 denial from Brian about the first sentence  3 in this e-mail of November 5th?  4 A No, sir, I did not.  5 Q Did he ever indicate to you that  6 there was any untruth in this e-mail –  7 A No, sir, he did not.  8 Q Let me finish.  9 A I'm sorry.  10 Q Depicted in Defendant's Exhibit  11 8?  12 A No.  13 Q Did it seem proper to you on  14 that Monday just to leave a voice mail on  15 somebody's message system and tell them you  16 are not coming?  17 MS. LINDSAY: Object to the  18 form.  19 Q Let me rephrase the question.  20 Why did you call around looking for a live  21 human?  22 A Because on September 5th of that  23 year, I had sent an e-mail to Mr. Burkhead</p>	<p>1 on the computer desktop.  2 MS. LINDSAY: Can I have a copy  3 of that? I've never seen that before.  4 A I just found it.  5 MR. BLYTHE: Actually, I don't  6 have a copy of it.  7 A Neither one of y'all have it.  8 MR. BLYTHE: I would like to go  9 ahead and enter that as Plaintiff's Exhibit  10 1.  11 (Plaintiff's Exhibit 1  12 was marked for  13 identification)  14 A So, I did not want to go through  15 that with him. I wanted to speak to  16 somebody to avoid any problems with that,  17 because he could have had the same problem  18 with the voice mail.  19 Q Were you still in communication  20 with your supervisor and Miltope employees  21 up and until the time you received that  22 termination letter?  23 MS. LINDSAY: Object to the  form.</p>
Page 341	Page 343
<p>1 to tell him that I would not be in that  2 day, and I neglected to put a subject on  3 the e-mail. That e-mail went directly into  4 his trash file because of the way he had  5 his settings on his e-mail. And he had  6 told me that if I was ever going to be out  7 again, I needed to try to get in touch with  8 somebody and let somebody know.  9 Well, I had sent this e-mail,  10 and it says I will not be in today. Sydney  11 is sick, throwing up. I am at home with  12 her. I will get with Lee and try to get  13 com order 34704, Navy Surface Warfare  14 Center Division, out. Call me on my cell  15 or e-mail me if you need to contact me.  16 Have fun in the new boat. See you  17 Tuesday. That was on a Friday.  18 And it was a big to-do at work  19 because he said he never got an e-mail from  20 me. And I told him that I had sent it. I  21 had to print that off from my home computer  22 to let him have it and let him find it in  23 his computer, because it was in his garbage</p>	<p>1 A I was in touch with some  2 employees. I had been sending e-mails to  3 employees that were my superiors that I  4 received no response from. And I had also  5 cc'd Mr. Crowell on every one of those I  6 sent to Brian and Gabe. No response from  7 him either.  8 Q So, this entire time that you  9 were sending e-mails to work from the  10 November 5th date on, those were also going  11 to Mr. Crowell, is that what you are  12 telling me?  13 A Some of them had courtesy cc's  14 to Mr. Crowell. Some of them had them to  15 Gabe and Mr. Crowell. Some of them -- I  16 don't think I sent anything just to Brian.  17 Q So, it would be safe to say that  18 you made sure there was more than one  19 person in any given situation that knew  20 what your situation was and you were  21 communicating with several people at one  22 time?  23 MS. LINDSAY: Object to the</p>

(Pages 344 to 347)

35

		Page 344	Page 346
1	form.	1	form. You are leading him.
2	A Yes, sir.	2	<b>Q How did you communicate with him?</b>
3	<b>Q Now, when you actually got the medical family leave paperwork -- let me back up.</b>	3	4 A I talked to him on the phone that time.
4	<b>What did you do as far as preparing to get family leave?</b>	6	<b>Q Did you follow this up with any other form of communication?</b>
5	MS. LINDSAY: Object to the form.	8	8 MS. LINDSAY: Object to the form. I feel like we are going through the same old process again.
10	<b>Q What was the first step?</b>	11	11 A This is just a brief synopsis of the --
11	A What was the first step?	13	13 MS. LINDSAY: I object to redoing the testimony that's already in place. Go ahead. You can answer. You are just covering ground already covered.
12	<b>Q Yes.</b>	17	17 A I sent e-mails asking was there anything else we needed, and I was in contact with Lee Butler doing some work with him, that kind of stuff.
13	A I mentioned it to somebody, and they told me I needed to -- I think Gabe and Brian told me I probably needed to talk to Ed. And I had said something to someone who sent Dee over to see me. I don't remember calling Dee and asking her to come over. I remember her walking by and I might have just asked her in passing.	21	<b>Q Did Brian, Ed or Gabe ever pick up the phone and call you?</b>
21	<b>Q Dee who?</b>	22	22 A Not to my knowledge.
22	A Coulter.		
23	<b>Q And what was her job?</b>		
		Page 345	Page 347
1	A She was the human resources benefits coordinator. I think that's what her title was.	1	<b>Q In fact, during this whole time period you were still working even from the doctor's office using your cell phone, using e-mail from home and other things; is that correct?</b>
4	<b>Q Is that who you got the paperwork for the family leave from?</b>	6	6 MS. LINDSAY: This is all leading. Object to form. Go ahead. You can answer the question.
6	A Yes.	9	9 A Yes.
7	<b>Q What did you do with the paperwork?</b>	10	10 MS. LINDSAY: Are you going to help me pay for the court reporter's time, by the way?
9	A I filled it out and put it on my desk.	13	13 <b>Q Did you perform work for Miltope after November 3rd?</b>
11	<b>Q Now, at this point after your meeting with Mr. Crowell and it became apparent that you needed to leave, what did you do to facilitate that?</b>	15	15 A Yes.
15	A Called --	16	<b>Q How about after November 5th?</b>
16	MS. LINDSAY: Object to the form.	17	17 A Yes.
18	<b>Q Who did you call?</b>	18	<b>Q The CAV codes. To your knowledge, would there be any reason for Brian or Gabe to know that you actually gave the codes or passwords to Lee?</b>
19	A I called my supervisor and asked him to turn the paperwork in. And if there was anything else he needed, let me know.	22	22 MS. LINDSAY: Object to the form.
22	<b>Q So, you actually spoke to him?</b>	23	
23	MS. LINDSAY: Object to the		

	Page 348	Page 350
1	<b>Q</b> Go ahead.	1 form.
2	A Not unless Lee told them after	2 A The Wednesday when I asked Brian
3	that point.	3 to turn the paperwork in.
4	<b>Q</b> I mean, there's no set up	4 <b>Q</b> I notice in Defendant's Exhibit
5	operating procedure or anything --	5 13 there were several communications from
6	MS. LINDSAY: Object to the	6 Gabe or at least a communication from Gabe
7	form.	7 concerning the laptop.
8	<b>Q</b> -- for conveying those	8 A Yes.
9	passwords?	9 <b>Q</b> Did his communication in any way
10	A No.	10 address the previous communication from
11	MS. LINDSAY: Object to the	11 you?
12	form.	12 MS. LINDSAY: Object to the
13	<b>Q</b> Do you have any reason to	13 form.
14	believe that Lee would conceal the fact	14 A That I had sent?
15	that you gave the passwords to him?	15 <b>Q</b> Yes.
16	A No.	16 MS. LINDSAY: Same objection.
17	MS. LINDSAY: Object to the	17 A No.
18	form.	18 <b>Q</b> He just basically asked for the
19	<b>Q</b> On the calendar, there were some	19 laptop and the password; is that right?
20	questions earlier about the November 3rd	20 MS. LINDSAY: Object to the
21	entry.	21 form.
22	A Yes.	22 A Yes, much as the termination
23	<b>Q</b> Is it possible that you did, in	23 letter.
	Page 349	Page 351
1	fact, perform some work for Miltope that	1 MS. LINDSAY: Object to the
2	day?	2 form.
3	A Yeah. I mean, I would have done	3 <b>Q</b> Did it seem fair to you to have
4	some stuff at home. I was trying to do	4 some third party come to you for this
5	stuff at home. As far as did I make it to	5 information rather than them addressing you
6	work, no. That would just have been a	6 directly?
7	mistake.	7 MS. LINDSAY: Object to the
8	<b>Q</b> Now, as far as you are concerned	8 form.
9	in this story, when did you effectuate	9 A It didn't seem very
10	turning in your paperwork?	10 professional.
11	MS. LINDSAY: Object to the	11 <b>Q</b> Would it have been better if
12	form.	12 Gabe had called you?
13	A That Wednesday when I saw my	13 MS. LINDSAY: Object to the
14	father was sick. I knew I had to get him	14 form.
15	taken care of and I had to get him to the	15 A I would -- it would have been
16	doctor. And I just -- there was no way	16 better if they had answered my e-mail like
17	that I could do what I thought I could do.	17 I asked. That would have been better,
18	I had to -- I had to get things under	18 because that's the way I requested the
19	control. And the only way to do that would	19 information.
20	have been to take the leave.	20 (Plaintiff's Exhibit 2
21	<b>Q</b> And when did you set the wheels	21 was marked for
22	in motion for that?	21 identification)
23	MS. LINDSAY: Object to the	22 <b>Q</b> Tell me what Plaintiff's Exhibit
		23 2 is, Pat.

(Pages 352 to 355)

37

Page 352	Page 354
<p>1 A "Mr. Crowell, I have a very 2 serious situation." It's my request to 3 have a meeting with him. It says further 4 down, "My father is very ill, and it has 5 reached the point that I need to be more 6 available to help him. Hospice does come 7 to the house now, but his needs are 8 increasing. His condition is terminal. I 9 would like to discuss my options with you."</p> <p>10 Q <b>So, that's initially how you 11 initiated the conversation prior to the 12 October 27th meeting with Mr. Crowell; is 13 that correct?</b></p> <p>14 MS. LINDSAY: Object to the 15 form.</p> <p>16 A Well, the one above that is the 17 second e-mail I sent requesting the 18 meeting. That was the one that actually we 19 worked from.</p> <p>20 (Plaintiff's Exhibit 3 21 was marked for identification)</p> <p>22 Q <b>Mr. Bailey, read Exhibit 3, 23 because we haven't beat this to death.</b></p>	<p>1 <b>you worked with that were aware of your situation?</b></p> <p>3 A Absolutely. Do you have this 4 one (indicating)?</p> <p>5 MR. BLYTHE: No.</p> <p>6 A I just found some of these.</p> <p>7 MS. LINDSAY: You are making my 8 job kind of hard.</p> <p>9 MR. BLYTHE: I don't think it 10 shows anything except that he was doing 11 work from home.</p> <p>12 A That's come up in conversation. 13 I just found the e-mail.</p> <p>14 Q <b>Let's mark that.</b></p> <p>15 <b>(Plaintiff's Exhibit 4 was marked for identification)</b></p> <p>17 Q <b>What is Plaintiff's 4?</b></p> <p>18 A This is an e-mail that Melody 19 Orr from Mechanicsburg, Pennsylvania, NAV 20 ICP sent me discussing that order that I 21 was working on with Lee from the doctor's 22 office on the phone. It says I've 23 completed all 20 items for you -- 25 items</p>
<p>1 A This is from one of the -- oh, I 2 forgot about another responsibility. I was 3 excess inventory something or another, 4 too. I don't know what they called that. 5 I dealt with different clearinghouses 6 trying to sell scrap off. "Hi Pat. I 7 understand that you are having some medical 8 problems at home. I hope things get 9 better. Sorry to have bothered you with 10 all the messages this past week. We are 11 moving forward with the sale of the LCD 12 displays that you sent me. Again, I hope 13 things get better at home. Best regards, 14 Herb."</p> <p>15 Q <b>Who is Herb?</b></p> <p>16 A Herb is the point of contact at 17 Harry Krantz, which is a clearinghouse for 18 excess inventory that we have, things that 19 are out of date that we used.</p> <p>20 Q <b>So, there were other -- what was 21 the date of that e-mail?</b></p> <p>22 A November 11th.</p> <p>23 Q <b>So, there were individuals that</b></p>	<p>1 for you. Good luck with the 1348's. I 2 know for a fact that you can get CAV from 3 any computer as long as you have the 4 correct address and user ID and password. 5 We have people in CAV that have worked from 6 home. She sent me the link, told me that I 7 could download the plug-ins. And I was on 8 dial-up is why it took so long to download 9 it. So, she gave me other people that I 10 could call if I had any problem because she 11 only works Monday through Thursday.</p> <p>12 Q <b>Just a couple of follow-up 13 questions. How did -- and I'm asking this 14 because this has become a point of some 15 issue. How did Brian convey to you that 16 you needed to get a letter from the doctor?</b></p> <p>17 MS. LINDSAY: Object to the 18 form, asked and answered.</p> <p>19 A He said, "You need a letter from 20 your father's doctor."</p> <p>21 Q <b>How was that communicated to 22 you?</b></p> <p>23 A I think he told me that on --</p>

Page 356	Page 358
<p>1 no. Yeah, he told me that on the phone or  2 either sent me an e-mail, one of the two.  3 I don't recall which.</p> <p>4 <b>Q</b> <b>Or both?</b></p> <p>5 <b>A</b> Maybe both.</p> <p>6 MR. BLYTHE: That's all I have.</p> <p>7 (Short break was taken.)</p> <p>8 EXAMINATION BY MS. LINDSAY:</p> <p>9 <b>Q</b> <b>Mr. Bailey, we are back on the</b>  10 <b>record. I have some follow-up questions</b>  11 <b>for you. We've talked about what your</b>  12 <b>impression was when your father saw a</b>  13 <b>doctor in July 2003 regarding his</b>  14 <b>pneumonia. Do you remember that testimony?</b></p> <p>15 <b>A</b> Yes.</p> <p>16 <b>Q</b> As I understood that testimony,  17 you heard him say that there was a tumor.  18 Do you recall that?</p> <p>19 <b>A</b> A mass. —</p> <p>20 <b>Q</b> A mass. And because of your  21 mother's untimely death from cancer, you  22 were thinking the worst, correct?</p> <p>23 <b>A</b> Well, he gave my mother --</p>	<p>1 him before his general poor health will.</p> <p>2 <b>Q</b> <b>Why would the doctor have put in</b>  3 <b>the notes that he was released in stable</b>  4 <b>condition, if that was the case?</b></p> <p>5 <b>A</b> He was doing better. I mean,  6 this was early in the scenario. He was in  7 there 12 days. So, in the very beginning  8 things did not look very good for him at  9 all.</p> <p>10 <b>Q</b> <b>But he managed to recover from</b>  11 <b>the pneumonia and was released to get into</b>  12 <b>physical therapy at Chapman, right?</b></p> <p>13 <b>A</b> Correct.</p> <p>14 <b>Q</b> <b>And ultimately he recovered</b>  15 <b>entirely based on the 11/06/03 visit in</b>  16 <b>that report, right?</b></p> <p>17 <b>A</b> Recovered from the pneumonia.</p> <p>18 <b>Q</b> <b>And at that time you were</b>  19 <b>reassured that there actually wasn't any</b>  20 <b>cancer, correct?</b></p> <p>21 <b>A</b> No. I didn't know for a fact  22 there was no cancer at all until the CAT  23 scan that was done in November of '04,</p>
Page 357	Page 359
<p>1 excuse me. Gave my father three months or  2 so to live. So, yes, I thought the worst.</p> <p>3 <b>Q</b> <b>Your prior testimony was that he</b>  4 <b>told you he had three to six months if it</b>  5 <b>was malignant.</b></p> <p>6 <b>A</b> He said three to six months. He  7 didn't say anything about malignant.</p> <p>8 <b>Q</b> <b>And you have reviewed with me,</b>  9 <b>I'm sure you'll recall, the documents that</b>  10 <b>establish that there was no malignancy</b>  11 <b>detected in July 2003, correct?</b></p> <p>12 <b>A</b> Some of that paperwork I only  13 saw and knew what any of it meant after the  14 fact.</p> <p>15 <b>Q</b> <b>The doctor never said your dad</b>  16 <b>had lung cancer, correct?</b></p> <p>17 <b>A</b> He said he thought it was  18 cancer. And he wasn't even sure, since the  19 pneumonia was that bad, that he would even  20 make it home, much less worry about the  21 cancer getting him. He said the reason not  22 to do this invasive of a procedure would be  23 that we don't know if his cancer will get</p>	<p>1 which would have been over a year later,  2 because he had come off of hospice.</p> <p>3 <b>Q</b> <b>Were you surprised that your</b>  4 <b>father was still apparently doing fairly</b>  5 <b>well considering your belief that he had</b>  6 <b>lung cancer?</b></p> <p>7 <b>A</b> Yes, I was.</p> <p>8 <b>Q</b> <b>He was still able to feed</b>  9 <b>himself, as you told me before, right?</b></p> <p>10 <b>A</b> Yes.</p> <p>11 <b>Q</b> <b>He was still able to attend to</b>  12 <b>his basic needs if you were not there,</b>  13 <b>correct?</b></p> <p>14 <b>A</b> Some of them, yes.</p> <p>15 <b>Q</b> <b>Before you told me that he was</b>  16 <b>able to tend to those needs so that you</b>  17 <b>were free to go to those band practices.</b></p> <p>18 <b>A</b> Yes.</p> <p>19 <b>Q</b> <b>You didn't feel bad about that,</b>  20 <b>right?</b></p> <p>21 <b>A</b> I mean, could he pay bills?</p> <p>22 No. Not that kind of thing. He couldn't  23 do stuff like that. As far as eat, take a</p>

(Pages 360 to 363)

39

Page 360	Page 362
1 bath at that point in time, yes, he could.	1 care of his basic needs.
2 Q You took care of his finances,	2 Q When you say that, you are
3 right?	3 saying you were being approved to receive
4 A Yes.	4 access to the veteran's benefits, the
5 Q And you testified earlier about	5 financial benefits?
6 your inability to support your family on	6 A No. I have power of attorney
7 the income from your bands.	7 over my dad's affairs now and have had for
8 A Right.	8 a couple of years.
9 Q And I suppose, then, that your	9 Q When did that begin? Was that
10 father receives some income based on his	10 after you left Miltope that you got the
11 status as a veteran and his --	11 power of attorney?
12 A Right.	12 A No. I had it before that.
13 Q And he probably receives social	13 Q Then what special approval
14 security?	14 process were you required to go through?
15 A Right.	15 A Aide in attendance is what it's
16 Q And he receives veteran's	16 called.
17 benefits?	17 Q Pardon?
18 A Right.	18 A Aide in attendance. His -- go
19 Q So, you manage all that income	19 ahead.
20 for him and pay the family bills, right?	20 Q After that approval was given to
21 A Correct.	21 you, what did you have the power to do that
22 Q So, your father's income	22 you didn't have the power to do before?
23 supports you, Sydney and him, correct?	23 A I was able to take care of my
Page 361	Page 363
1 A Right.	1 father.
2 Q And that's been true for several	2 Q What does that mean, take care
3 years now, right?	3 of your dad, as far as the Veteran's
4 A Several is a bad way to put it.	4 Administration is concerned?
5 No, it's not been several years.	5 A Well, you know, hospice is
6 Q Has it been true since you	6 licensed care, that kind of thing. I
7 stopped working at Miltope?	7 wanted to be able to take care of him.
8 A I had to be approved by the	8 Q Did you receive any special
9 Veterans Administration to care for him.	9 training from the Veteran's Administration
10 So, it was several months after I worked at	10 on how to take his vital statistics?
11 Miltope.	11 A No. But I've learned how to do
12 Q Didn't you have that approval	12 that.
13 prior so that you could get that medication	13 Q You learned that from hospice?
14 that you were trying to --	14 A I have a machine that takes his
15 A No. He's had veteran's benefits	15 blood pressure and he has a nebulizer for
16 since he retired from the Marine Corp in	16 his breathing treatments.
17 1968 and has always gotten his medicines	17 Q And do you have CPR training?
18 through the VA pharmacy.	18 A I have had it. I probably am
19 Q What type of approval process	19 not certified right now. But if I had to
20 are you referring to?	20 administer it, I could.
21 A I had to meet with the veteran's	21 Q What special status do you have
22 representative in Alexander City and submit	22 with the Veterans Administration as a
23 paperwork to be approved to help him take	23 result of this approval? Are you able to

Page 364	Page 366
<p>1 <b>use money on his behalf that the Veterans</b>  2 <b>Administration pays to him?</b></p> <p>3 A It's just to allow me to be able  4 to stay home with him. It helps supplement  5 the income to allow me to stay home with  6 him rather than him be put in a government  7 facility.</p> <p>8 Q <b>What paperwork did you have to</b>  9 <b>submit to get that approval?</b></p> <p>10 A <u>I would have to go back and look</u>  11 at the records from the files that we sent  12 in.</p> <p>13 Q <b>What did you have to prove to</b>  14 <b>them about yourself to get that approval?</b></p> <p>15 A I don't know. I mean, we would  16 have to talk to the veteran's  17 representative.</p> <p>18 Q <b>Did they have the power to put</b>  19 <b>him in an assisted living facility without</b>  20 <b>your consent?</b></p> <p>21 A No, probably not. But it was  22 just -- I don't know how to answer what you  23 are asking. If I knew where you were</p>	<p>1 A I'm not sure when we applied for  2 it.</p> <p>3 Q <b>Are there records that exist</b>  4 <b>that would show us that?</b></p> <p>5 A Probably so.</p> <p>6 Q <b>Although there is not before us</b>  7 <b>a similar document from 2001 that shows you</b>  8 <b>signed off on receiving the handbook, you</b>  9 <b>did agree to conform to all Miltope</b>  10 <b>policies, correct?</b></p> <p>11 A It says in the last statement in  12 the handbook -- where is the handbook?</p> <p>13 Q It's here (indicating).</p> <p>14 A Read the last sentence in the  15 handbook.</p> <p>16 Q "I have read the handbook and  17 agree to conform to the rules of Miltope  18 Corporation." That's what's on the  19 acknowledgment. Is that what you are  20 talking about?</p> <p>21 A No. On the last page of the  22 book itself.</p> <p>23 Q <b>That is the last page of my</b></p>
Page 365	Page 367
<p>1 going, I could probably have a better  2 chance to answer that question.</p> <p>3 Q <b>I'm just confused about why you</b>  4 <b>needed some special approval from the</b>  5 <b>Veterans Administration if you already were</b>  6 <b>able to manage his financial affairs and</b>  7 <b>you already knew how to handle taking care</b>  8 <b>of his vital statistics and measurements.</b></p> <p>9 I don't understand what else you would need  10 from the Veterans Administration.</p> <p>11 A I guess the okay, them saying  12 it's okay. I don't know.</p> <p>13 Q <b>And as a result of their okay,</b>  14 <b>did they give him a greater amount of</b>  15 <b>money?</b></p> <p>16 A There is an increased benefit  17 for that.</p> <p>18 Q <b>How much does he receive every</b>  19 <b>month?</b></p> <p>20 A I would have to go look at the  21 records.</p> <p>22 Q <b>And you applied for that</b>  23 <b>increased benefit in November of 2003?</b></p>	<p>1 <b>book.</b></p> <p>2 A Does it not say something in  3 there about Miltope reserves the right to  4 change any of these without notice? So, I  5 don't know if it was the same book that I  6 would have gotten the second time or not.</p> <p>7 Q <b>My question is you agreed to</b>  8 <b>conform to the policies to the extent you</b>  9 <b>understood them?</b></p> <p>10 A Okay. That's fair.</p> <p>11 Q <b>And you understood what the</b>  12 <b>policies were in 1996, '97, correct?</b></p> <p>13 A For the most part. I had not  14 had to refer to them.</p> <p>15 Q <b>But you had had access to them</b>  16 <b>and you still had access to them, right?</b></p> <p>17 A Yes.</p> <p>18 Q <b>And there was never a time you</b>  19 <b>had a question about a policy that you</b>  20 <b>couldn't get answered, right?</b></p> <p>21 A Probably not.</p> <p>22 Q <b>I thought on September 5th,</b>  23 <b>based on your rehearsal schedule, that you</b></p>

(Pages 368 to 371)

41

Page 368

1 **were rehearsing for the McQueen Street  
2 reunion show. Am I wrong?**  
3 A I don't know.  
4 Q There was a September 5th e-mail  
5 that your lawyer designated as Plaintiff's  
6 Exhibit 1 indicating that you sent an  
7 e-mail to Brian saying that Sydney was  
8 throwing up and you had to stay home.  
9 A Okay. And what did that  
10 rehearsal schedule say?  
11 Q According to other e-mails, that  
12 was a rehearsal weekend.  
13 A Okay. If I was gone to  
14 rehearsal, how could I have sent an e-mail  
15 from my house.  
16 Q That's my question to you, sir.  
17 A I'm asking.  
18 Q Sir, I'm the one who is trying  
19 to ask the questions to know your  
20 situation, because I didn't live these  
21 events.  
22 MR. BLYTHE: Let me go off the  
23 record for a second.

Page 368

Page 370

1 Q In your testimony we've gone  
2 over these documents a couple of times, and  
3 I'm confused. This is Exhibit 6. You see  
4 that it says Miltope on it, right?  
5 A Right.  
6 Q And you see that it appears to  
7 be forms that one would fill out for family  
8 medical leave, right?  
9 A It says physician's  
10 certification for family medical leave.  
11 Q That's the first page of that  
12 exhibit?  
13 A Yes.  
14 Q What's the next page?  
15 A Request for family medical  
16 leave.  
17 Q And what's the third page?  
18 A Employee acknowledgment.  
19 Q Are you trying to say that you  
20 never saw page one of that exhibit when Dee  
21 Coulter gave you those materials?  
22 A I don't recall seeing page one.  
23 Q Did you see page two and page

Page 369

Page 371

1 (Discussion held off the record)  
2 A I don't know.  
3 Q So, you don't know how to  
4 explain that. All right.  
5 You wouldn't have lied to Brian,  
6 would you? You weren't trying to hide that  
7 you were involved in this band, were you?  
8 A No, no, no.  
9 Q The sign-in sheets that you were  
10 shown earlier for weeks ending 11/2 and  
11 11/9, you testified that those were not  
12 your signatures on those sheets. Do you  
13 remember that testimony?  
14 A Yes, I do.  
15 Q And I believe we've looked at  
16 those sheets together before, and I just  
17 want to make sure I understood you  
18 correctly. You don't dispute what's listed  
19 on those sheets in terms of your time,  
20 right?  
21 A No.  
22 Q I'm correct?  
23 A Yes.

1 three?  
2 A I don't see page numbers on  
3 them.  
4 Q I'm just talking about the  
5 exhibit itself. Did you see the other  
6 pages within that exhibit?  
7 A I saw this and filled that out  
8 (indicating), and I saw this (indicating)  
9 and filled that out. Wait a minute. I  
10 signed that. And it said leave to start,  
11 and I put immediately.  
12 Q Those are the --  
13 A This doesn't really look like  
14 the same thing I saw. Have they had a form  
15 change since I did this?  
16 Q Someone represented to me that  
17 those were the forms that were given to  
18 you. But you are telling me that you think  
19 it might be different?  
20 A Well, it's possible. Do they  
21 have the forms that I -- don't ask her  
22 questions.  
23 Q They don't. And if you had a

Page 372	Page 374
1 copy of them, I would love to see what you 2 filled out. But you don't have a copy, 3 correct? 4 A No. 5 Q Was there anything else that you 6 filled out other than the two pages that 7 you just talked about? 8 A I don't think so. 9 Q I've heard you testify to having 10 some e-mail communications. And as I 11 understand your testimony, you came to a 12 point where you only e-mailed Gabe and 13 Brian and you wanted them to e-mail you 14 back? 15 A No. 16 Q You did not want to discuss 17 things by telephone? 18 A Right. 19 Q Did this preferred approach on 20 your part in terms of e-mail communication 21 begin as of November 5th? 22 A I'm not sure of the exact date 23 that it began. But when I could get no one	1 you sent this e-mail on November 5th at 2 8:29 a.m. after you had that conversation 3 with Brian? 4 A Can I see that, please? 5 Q Sure. 6 A Okay. This is the same Exhibit 7 8. 8 Q Exactly. 9 A Yes, it is fair to think that 10 this was after that. 11 Q After that conversation with 12 Brian by phone, right? 13 A Yeah, it would have been after 14 because it says, "I have requested a letter 15 from the doctor detailing my father's 16 condition to satisfy the approval for 17 leave. I will forward it to your attention 18 when I receive it." 19 Q Based on your testimony and your 20 e-mails, I believe that was the last 21 telephone conversation you had with any 22 management employee at Miltope. Am I 23 right?
Page 373	Page 375
1 to give me any straight answers, the 2 answers or any communications that I got at 3 that point I wanted in writing. 4 Q As I understand it, you did have 5 a phone conversation with Brian on November 6 5th. 7 A That was me asking or telling 8 him to turn the paperwork in. 9 Q I'm just asking you did have a 10 phone conversation, yes or no. 11 A Yes, on the 5th. 12 Q Was that the last phone 13 conversation you had with Brian? 14 A I think so. The next thing I 15 got from Brian was an e-mail telling me 16 that I need a letter or a -- 17 Q All I need is a yes or no. 18 A I'm not sure. I don't remember 19 if it was an e-mail or a phone call. 20 Q According to this Exhibit 8, 21 there is an e-mail from you to Brian saying 22 you have requested a letter from the 23 doctor. Now, is it a fair assumption that	1 A That's possible. 2 Q If your testimony reflects that 3 that's accurate — I mean, your memory is 4 not the same as it was last time. It's 5 important that I understand what your 6 communications were, and this is my chance 7 to find out. Can you be more certain? 8 A I think that is the last phone 9 conversation I had with management. 10 Q As far as your e-mails, as I 11 understand it, Exhibits 8, 13 and 14 12 reflect all of your e-mail communications 13 that would have been directed to either Ed 14 Crowell as a cc or directly to Brian 15 Burkhead or directly to Gabe Riesco. Can 16 you look at these and tell me whether 17 there's anything else? Because if there's 18 anything else, I need to see it today. 19 A I think so. 20 Q You have e-mails with you that 21 you've referred to during this deposition. 22 Are there other e-mails in your stack? 23 A I don't think so.

1   **Q   If there are and they come up**  
 2   **after today, I'm going to object to their**  
 3   **being used in this litigation because I**  
 4   **think I was entitled to see them before**  
 5   **today. So, this is your chance. Are you**  
 6   **sure?**

7       THE WITNESS: Do you want me to  
 8   dig through and see if I can find anything,  
 9   or do you want to let that be it?

10      MR. BLYTHE: Flip through there  
 11 and see.

12      **Q   Let me put it this way: You**  
 13   **don't have to flip through right now. But**  
 14   **if there's something else, I need it this**  
 15   **week.**

16      A    Okay. That's fair.

17      MS. LINDSAY: And if there's  
 18 something else, then I reserve the right to  
 19 reopen.

20      **Q   Based on my understanding that**  
 21   **these three exhibits represent your e-mail**  
 22   **communications to these management**  
 23   **employees, my understanding is that your**

1   **e-mail occurred. Am I right?**  
 2   A    I don't see anything on here.  
 3   **Q   And it's your testimony that you**  
 4   **wrote that and e-mailed that to Gabe?**

5   A    Yes.

6   **Q   Why wouldn't there be a date on**  
 7   **there?**

8   A    I don't know that.

9       MS. LINDSAY: I think that's  
 10 it. Thanks.

11      (Discussion was held off the record.)

12      THE WITNESS: Hang on one  
 13 second. Here is one thing I want to say.  
 14 You know the paper that you've got that  
 15 looks like this from the doctor's office  
 16 (indicating)?

17      MR. BLYTHE: It's Exhibit 3.

18      THE WITNESS: This ain't the  
 19 same paper. Let's see Exhibit 3 right  
 20 quick. What does yours say for result down  
 21 there?

22      MR. BLYTHE: Negative.

23      THE WITNESS: Well, mine says

1   **final e-mail was the one sent November**  
 2   **18th, Tuesday, Gabe, could you direct any**  
 3   **communication to me.**

4   A    That's not the final e-mail.  
 5 There were ones like that one that was  
 6 further down the line. There's another one  
 7 further out than that.

8   **Q   To Gabe?**

9   A    What was the date on this one  
 10 right here to Gabe (indicating)?

11   **Q   I'm sorry. On November 19th he**  
 12   **e-mailed you. And then you e-mailed him**  
 13   **back, but there's no date on that. Do you**  
 14   **know why there's no date?**

15   A    I do not.

16   **Q   And this was apparently printed**  
 17   **off from your computer based on the line at**  
 18   **the top. Am I right?**

19   A    Yes.

20   **Q   So, in response to Gabe's**  
 21   **November 19th e-mail, according to that**  
 22   **piece of paper, you e-mailed him back. But**  
 23   **there's no date reflected as to when that**

1   atypical. Why would that be?

2       MR. BLYTHE: That's 7/16, the  
 3 run date.

4       THE WITNESS: And this is 7/8.  
 5 Why does that say atypical?

6       MR. BLYTHE: You've got me.

7       THE WITNESS: Atypical means  
 8 what?

9       MS. LINDSAY: May I look at the  
 10 document you are referring to?

11      THE WITNESS: Not normal.

12      MR. BLYTHE: The comments are  
 13 different, too.

14      THE WITNESS: Eight days apart.  
 15 That's what I made my decision off of.

16      **Q   (By Ms. Lindsay) When was this**  
 17   **produced to us?**

18   A    I just have gone through a bunch  
 19 of stuff at the house. I thought that this  
 20 paper was the same as that paper  
 21 (indicating). But when we went through  
 22 this earlier and you read that negative for  
 23 malignancy, remember I told you I hadn't

Page 380	Page 382
<p>1 heard anything about malignancy?</p> <p>2 <b>Q Right.</b></p> <p>3 A That's what I saw. It says</p> <p>4 atypical.</p> <p>5 <b>Q So, people didn't use the word</b></p> <p>6 <b>"malignancy." They used the word</b></p> <p>7 <b>"atypical" with you?</b></p> <p>8 A That's what that says. Read</p> <p>9 down there where it says squamous.</p> <p>10 <b>Q Squamous epithelium are</b></p> <p>11 <b>identified. Atypical group, and I can't</b></p> <p>12 <b>pronounce that word.</b></p> <p>13 A Squamous cell carcinoma is a</p> <p>14 form of cancer that happens from the sun.</p> <p>15 The word "squamous" when I sold insurance</p> <p>16 was in the definition of cancer. When I</p> <p>17 saw squamous on there, that looks like</p> <p>18 cancer to me.</p> <p>19 <b>Q Did you ask Dr. Law if that</b></p> <p>20 <b>meant cancer?</b></p> <p>21 A I'm not sure if I did or not.</p> <p>22 When I was told that my father had a mass</p> <p>23 in his lung and then the doctor tells me</p>	<p>1 <b>Q When did you get that from</b></p> <p>2 <b>hospice? What are you referring to?</b></p> <p>3 A I am looking at this other piece</p> <p>4 of paper I was about to give you.</p> <p>5 THE WITNESS: Have you got that</p> <p>6 (indicating)?</p> <p>7 MR. BLYTHE: I don't think so.</p> <p>8 A I've been doing some digging and</p> <p>9 finding other stuff, too.</p> <p>10 <b>Q Good for you. Bad for me.</b></p> <p>11 A The reason I sit here and</p> <p>12 torture myself over the answers is I'm just</p> <p>13 trying to tell the truth.</p> <p>14 MR. BLYTHE: And that's --</p> <p>15 <b>Q That's what we want you to do.</b></p> <p>16 <b>It's just that it's hard for us to manage</b></p> <p>17 <b>the deposition if we don't have the</b></p> <p>18 <b>documents in advance.</b></p> <p>19 MR. BLYTHE: There was something</p> <p>20 else here that had me very confused. I was</p> <p>21 like what does that have to do with --</p> <p>22 THE WITNESS: Dogs do not bite.</p> <p>23 MR. BLYTHE: Now I understand.</p>
Page 381	Page 383
<p>1 that they went in there to try to get it</p> <p>2 and couldn't get it and there was going to</p> <p>3 be all this invasive surgery and everything</p> <p>4 else, the --</p> <p>5 <b>Q And you didn't want to put your</b></p> <p>6 <b>dad through that invasive --</b></p> <p>7 A He couldn't have lived through</p> <p>8 it. There was no way he could live through</p> <p>9 it. That's why we decided not to have all</p> <p>10 that invasive procedure done. Because he</p> <p>11 had told me if you go in there and try to</p> <p>12 get this out, it will reduce the quality of</p> <p>13 life he has right now. If we can just get</p> <p>14 this pneumonia cleared out, we can get him</p> <p>15 home. He will probably have some time.</p> <p>16 But he said that his long-term prognosis is</p> <p>17 not good with his health the way it is, and</p> <p>18 that is what was given to me. That's what</p> <p>19 hospice had and everything like that.</p> <p>20 <b>Q So, you did receive a copy of</b></p> <p>21 <b>this piece of paper I'm holding while you</b></p> <p>22 <b>were visiting with the doctor?</b></p> <p>23 A No. I got that from hospice.</p>	<p>1 <b>Q Referring to your lab at home,</b></p> <p>2 <b>at Lake Martin?</b></p> <p>3 A Yeah, the Lake Martin lab.</p> <p>4 MS. LINDSAY: May I look at this</p> <p>5 document? This is Faith Hospice Patient</p> <p>6 Information, and it's dated --</p> <p>7 A That's probably just something</p> <p>8 that was in a file.</p> <p>9 <b>Q I can't tell when it's dated.</b></p> <p>10 <b>Based on the appearance of the document,</b></p> <p>11 <b>you kept it in a three-ring binder?</b></p> <p>12 A I think they kept it in a</p> <p>13 three-ring little paper folder with the</p> <p>14 little things on it.</p> <p>15 <b>Q And they gave you their</b></p> <p>16 <b>original?</b></p> <p>17 A That's probably the initial one</p> <p>18 that they had.</p> <p>19 MS. LINDSAY: I guess what we</p> <p>20 will do is make a copy of this. Can we</p> <p>21 just make this an exhibit to the record and</p> <p>22 get copies of it that way?</p> <p>23 MR. BLYTHE: You can do it with</p>

(Pages 384 to 386)

45

Page 384

Page 386

1 that one, too, if you want to (indicating).  
 2 MR. LINDSAY: We don't have to.  
 3 I think we've got it in the records we  
 4 subpoenaed.

5 (Plaintiff's Exhibit 5  
 6 was marked for  
 7 identification)

8 **Q The doctor did not discuss with**  
**you this comment on Exhibit 5 that you've**  
**shown me, the atypical squamous cells?**

9 A There were two doctors. There  
 10 was an attending physician and there was a  
 11 specialist.

12 **Q Did either one of them explain**  
**to you that comment?**

13 A The one doctor told me that  
 14 there is a mass in his lungs.

15 **Q And you've told me about that**  
**conversation, right?**

16 A Yeah. That's the same old  
 17 conversation over and over.

18 **Q And that's Dr. Law?**

19 A Exactly.

20 **MS. LINDSAY: I'm done.**

Page 385

1 MR. BLYTHE: I don't have  
 2 anything else.

3  
 4 (END OF DEPOSITION)

## 1 C E R T I F I C A T E

2  
 3 STATE OF ALABAMA )  
 4 JEFFERSON COUNTY )

5  
 6 I hereby certify that the above  
 7 and foregoing deposition was taken down  
 8 by me in stenotype, and the questions and  
 9 answers thereto were reduced to computer  
 10 print under my supervision, and that the  
 11 foregoing represents a true and correct  
 12 transcript of the deposition given by  
 13 said witness upon said hearing.

14  
 15 I further certify that I am  
 16 neither of counsel nor of kin to the  
 17 parties to the action, nor am I in  
 18 anywise interested in the result of said  
 19 cause.

20  
 21 LeAnn Maroney, Commissioner